S. Hrg. 99-292

# FCC NETWORK ACQUISITION APPROVAL ACT OF 1985

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## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

## S. 1312

TO PROVIDE THAT THE FEDERAL COMMUNICATIONS COMMISSION REVIEW THE PROPOSED ACQUISITION OF TELEVISION NETWORKS TO ENSURE SUCH ACQUISITIONS ARE IN THE PUBLIC INTEREST, AND FOR OTHER PURPOSES

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JULY 18, 1985

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# CONTENTS

Page

Opening statement by the Chairman ..... 1
Opening statement by Senator Hollings ..... 2
Opening statement by Senator Pressler ..... 4
Text of S. 1312 ..... 7

## LIST OF WITNESSES

Fowler, Hon. Mark S., Chairman, Federal Communications Commission ..... 13
Geller, Henry, Washington Center for Public Policy; and Glen O. Robinson, professor, University of Virginia School of Law ..... 59
  Prepared statements:
    Mr. Geller ..... 61
    Mr. Robinson ..... 67
Turner, R. E. III, chairman of the board and president, Turner Broadcasting System, Inc ..... 40
  Prepared statement ..... 54
Wyman, Thomas H., chairman of the board and chief executive officer, CBS, Inc., accompanied by Mr. Wiley ..... 29
  Prepared statement ..... 37

## ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Denison, Ray, director, Department of Legislation, AFL-CIO, letter ..... 80
Eagleton, Hon. Thomas F., U.S. Senator from Missouri, statement ..... 77
Fowler, Hon. Mark S., Chairman, Federal Communications Commission, letter ..... 78
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, letter ..... 78
Vradenburg, George III, vice president and general counsel, CBS, Inc., letter ..... 79
Warden, Dick, legislative director, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW, letter ..... 80

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# FCC NETWORK ACQUISITION APPROVAL ACT OF 1985

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THURSDAY, JULY 18, 1985

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:30 p.m., in Room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the committee) presiding.

Staff members assigned to this hearing: Dan Phythyon, staff counsel; Dale Brown, professional staff member; and Tom Cohen, minority staff counsel.

## OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. This is a hearing on S. 1312, the FCC Network Acquisition Approval Act of 1985. Many segments of the American economy are undergoing a surge of mergers and acquisitions. The broadcasting industry is no exception. It was once assumed that the Federal regulatory framework surrounding broadcasting would protect existing owners from hostile takeovers or related corporate upheavals.

We all know that that assumption is no longer the case. It used to be that "poison pills," "white knights," and "sharks" were only plot devices and characters in television soap operas and prime time programs. Now these words are a standard part of every television executive's vocabulary.

The list of long-established companies that appears almost daily in the business pages reads like a "who's who" of broadcasting. ABC, CBS, Metromedia, Multimedia, Storer. Probably every group owner is looking for new opportunities or wondering whether someone else is looking at them as an opportunity.

These recent events have focused increasing attention on the statutory and regulatory provisions governing FCC review and approval of transfers of control.

Today's hearing centers on the somewhat narrower issues raised by S. 1312, which would establish new procedures when television networks are subject to hostile takeovers. Topics for consideration today include how the FCC has treated past network takeover attempts; whether the Communications Act's existing review procedures are sufficient, or whether TV network takeovers raise extraordinary concerns that call for additional procedures; and whether the bill effectively would insulate incumbent network management against outside challengers.

We have a distinguished group of witnesses today, beginning with Senator Pressler, who has introduced this bill. Before getting to the witnesses, I wonder if Senator Hollings has any comments he would like to make.

## OPENING STATEMENT BY SENATOR HOLLINGS

Senator HOLLINGS. Once again, the sky has fallen on the Commerce Committee.

Just last month, members of this committee scurried about to pass legislation that would prevent Carl Icahn from acquiring Trans World Airlines. Never mind TWA's staunch support for deregulation. The sky was falling, for heaven's sake. Pass a bill. Protect TWA.

And, where is the Icahn takeover today? TWA found its "white knight." But this committee has legislation on its way. And, if it ever becomes law, we'll know that our Government's aviation policy was determined not by our desire to deliberate carefully to protect the public interest, but by our hurried efforts to save one particular company from a hostile takeover that has all but fizzled anyway.

Well, tallyho. Here we go again. The committee meets today to hear testimony on another panic bill—this time directed at Turner Broadcasting's attempted hostile takeover of CBS. Proponents of the legislation, believing that the FCC has not properly exercised its discretion in overseeing the Turner attempt, would have Congress set down certain FCC procedures that would have to be followed when hostile takeovers of television networks are proposed.

Let's take a closer look at this legislation. If changes in television network ownerships are important—which they are—then why does this bill apply only to hostile takeovers? And why doesn't this bill apply to all major media takeovers, not just those of television networks? If we want to reassert independent government review of these takeovers, why is this bill triggered only by a decision of the network's board of directors? Why doesn't this bill put some meat back onto the bones of the public interest standard, so as to give the FCC something to apply to these takeover attempts?

I'll tell you why. Because this bill is not public interest legislation. This is network protection legislation.

Once again, we have before us a bill which ignores the overall effects of deregulation on the American public, simply imposing selective regulation solely to protect a particular company.

Everyone knows I am not shy about faulting the FCC, but I have not found it to have slighted any party in the Turner Broadcasting-CBS battle. The comment period not only has been lengthy but has permitted comments, reply comments, and reply to reply comments. The FCC is also going to have an oral hearing, and the possibility of an evidentiary hearing is not foreclosed if a substantial and material question of fact is in dispute. The Commission has comments galore. What it doesn't have is a meaningful standard upon which to judge an acquisition.

Over the past 4 years, the FCC has through a series of decisions—some of which I supported and many of which I opposed—taken most of the meat from the public interest standard. Look at the fee this committee just approved to cover the cost of regulating television licensees: $30 annually. What better indication can there be of the level of government scrutiny of the broadcast industry? How much review of a licensee can there be in $30 worth of time? There's barely enough time to get out the rubber stamp. The true issue that is skirted by S. 1312 is how to give the public interest standard some meaning. That is what we should be working on. Once that is done, a hard look should necessarily follow.

I find it ironic that many in the broadcast industry are now frightened of the FCC's hands-off approach when it comes to hostile takeovers. The industry championed Chairman Fowler's efforts to deregulate. Did CBS support strong children's programming requirements? Did CBS support local programming requirements? Did CBS support the maintenance of the Fairness Doctrine? Did CBS ever support writing television networks into the Communications Act? No. Yet, here is CBS today—and the other networks are by and large not that much different—wanting regulatory protection. The industry cannot have it both ways.

While the FCC has so far handled the Turner Broadcasting-CBS matter properly, I am concerned about some of its other decisions in regard to media takeovers. As I had indicated to the FCC, the *Storer* decision was based on highly questionable logic about the source of control in a widely held corporation. The recent use of a trustee mechanism in the Multimedia-Jack Kent Cooke proceeding is also very troubling. The actions of a trustee may well so change the nature and structure of the takeover target that a thorough public interest review by the Commission becomes impossible. On the other hand, I am glad the FCC finally initiated an inquiry into how it should handle the issues involved in takeovers. As I am sure the FCC knows, I will be watching its actions very carefully.

My comments should not be read as favoring or opposing any media takeover. My point is that takeovers per se are not the issue that should be before us today. The issue is how will the public be served. What kind of programming are we going to see when broadcasters focus only on the bottom line and the FCC has no public interest standard? What pressures are placed on the FCC's ownership rules in this new environment such that we might see more and more exceptions? In general, what will happen to the trust we have placed in broadcasters to serve their communities? These are the questions we should be examining, not the false ones posed in S. 1312.

The public interest should be before us today, not the network interest.

In a capsule, as I came in, you said everyone is looking for opportunities. That is America. And I do not like the Congress being used to forstall this market search of opportunity. In this particular instance, I have friends on both sides. I have my CBS friends rushing to my office, saying let's have a long evidentiary hearing, hold up the process. I have the Turner group coming in and saying, let's have a hearing in the next 10 minutes so we can catch up wth the refinancing plan of CBS; get on the Federal Communications Commission.

Of course, I came out for my friends. I did not do either one. And I did not want to have this particular hearing. I think somewhere in the record should be included our belief that the Congress should not be used to preempt the administrative body for special interest purposes. I think the Federal Communications Commission has been moving properly in the Turner-CBS matter under the circumstances, and unless we find some gross violation or need in statutory reform, that they are not carrying out their responsiblities, then we should not act. But to get friends constantly to run to us here in the Commerce Committee is not good. It is like the Icahn bill; whoopee, run up, have a hearing. Now nobody wants the Icahn bill reported out.

How can we sit up here, friendly, unfriendly, partial takeover, used as part of the administrative delay for the market and those kind of things? I think in essence, it is use that amounts to an abuse, and I wanted to state that for the record. I did not think we should have this hearing this afternoon—but I am always delighted to be with you, Mr. Chairman.

Thank you.

The CHAIRMAN. It is better than the budget conference.

Senator HOLLINGS. Oh, much more peaceful. Yes, sir.

The CHAIRMAN. We do have a very good group of witnesses today. I would ask witnesses to keep your statements down to 5 minutes if you could. I know that all of you have longer prepared statements. You do not even have to ask for permission that they be included in the record. They will automatically be included in the record.

Senator Pressler, thank you very much.

## OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman.

I, too, look forward to the testimony of so many fine witnesses, and I note that we are competing this afternoon with a budget conference and an agricultural meeting and a defense meeting, and I know that some of our colleagues will be dropping by who currently are committed in other places.

Today's hearing focuses on the Network Acquisition Approval Act of 1985 which I introduced last month. This bill is cosponsored by Senators Eagleton, Exon, Inouye, Durenberger, Abdnor, Melcher, Proxmire, Dixon, Domenici, Bingaman, and Andrews. This act would codify past practice by directing the FCC to hold full evidentiary hearings to determine the public interest implications of a hostile takeover attempt of a television network. Only after such a proceeding could the Commission decide whether an application for transferring network-owned licenses meets the public interest standards mandated by the Communications Act.

I am skeptical of deregulation when it reaches a point at which the public interest is not being protected. Each time a deregulatory issue comes before this committee, I ask myself, "What does this mean for my constituents in rural and small city, South Dakota?" I believe they need some form of protection. In my home State, the public interest needs include emergency weather reports, local news and information. Without a strong network supporting them, our affiliates could not offer these essential services.

What if one large corporation purchased all three networks? I know this is a very hypothetical question, but it serves to point out that if we faced such a media monopoly, it is likely that many of the information needs and the special programming needs of the rural minority of this country would not be met. Today, their special needs are often met by affiliate stations who seek to serve their customers. However, it is clear that the financial strength of the network, after a hostile takeover, will impact on the services it can provide to its affiliates. This, in turn, will impact on the public services the affiliates can provide their viewers.

This is not an anti-Ted Turner bill. I like Ted Turner very much and have said so publicly on many occasions. It is not a pro-CBS bill. However, I also think their management has done an excellent job. Rather, this bill takes the long-term view. I welcome my colleagues' amendments and ideas to improve this legislation, but I think it is an issue we must address. I know because of some of the immediate cases occurring in the country, there have been many interpretations of this bill, but my concern is that the FCC has standardized procedures for dealing with hostile network takeovers.

The use of evidentiary hearings is not a new idea. In fact, it originated with the FCC. Believing that changes in control of the networks entailed issues of transcendental importance, the Commission in the past has always convened evidentiary hearings before passing upon any proposed hostile takeover of a network. No one, I think, would dispute the Commission's view of the critical importance of the major television networks. They are the arteries for a national system of news and entertainment programming. Local affiliates and the public at large depend upon the networks' ability to provide a first-rate service without disruption. In determining whether a possible transfer of network ownership is in the public interest, it makes obvious sense that the FCC should take greater pains than it would over transfers of a single broadcast station.

This act will ensure that the FCC continues to take those pains. I do not believe that this need take several years, as some have suggested. With today's technological assistance and our ability to pull together much information in a short period of time, I think it is possible to hold these hearings in a timely manner.

If we find that the FCC is holding things up and not allowing the free enterprise system to work, then we should either give them more people to do their job or lessen the regulatory requirements. I do not look upon this as something that would slow down any transfers.

I will not comment on the events which have transpired in the last few days with regard to any specific takeover attempts. I would rather this hearing focus on codifying the proven framework for network transfers: evidentiary hearings. An evidentiary hearing is a neutral tool of regulatory policy that serves neither as a shield for incumbent management nor as a sword for would-be management. It serves, instead, the public interest, and it is that interest which Congress has directed the FCC to protect.

Again, I thank you, Mr. Chairman, for calling this hearing. I look forward to the comments of our other witnesses.

[The bill follows:]

99TH CONGRESS
1ST SESSION

# S. 1312

To provide that the Federal Communications Commission review the proposed acquisition of television networks to ensure such acquisitions are in the public interest, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 18 (legislative day, JUNE 3), 1985

Mr. PRESSLER (for himself, Mr. EAGLETON, Mr. INOUYE, Mr. EXON, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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# A BILL

To provide that the Federal Communications Commission review the proposed acquisition of television networks to ensure such acquisitions are in the public interest, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Communications Commission Network Acquisition Approval Act of 1985".

### HEARING ON ACQUISITION OF TELEVISION NETWORKS

SEC. 2. Title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting at the end thereof the following new section:

"HEARING ON AQUISITION OF TELEVISION NETWORKS

"SEC. 333. (a) As used in this section the term 'television network' means—

"(1) any person, entity or corporation that—

"(A) is licensed to operate five or more television broadcast stations; and

"(B) offers an interconnected program service on a regular basis for fifteen or more hours per week to at least twenty-five affiliated television licensees in ten or more States; or

"(2) any person, entity, or corporation controlling, controlled by, or under common control with a person, entity or corporation defined in paragraph (1).

"(b) Prior to the grant of any application involving a proposed acquisition of ownership or control of a television network whose Board of Directors has not approved the proposed acquisition, the Commission shall—

"(1) require the applicant to file—

"(A) the identities of all persons involved in the proposed acquisition;

"(B) the sources of all funds to be used in the proposed acquisition;

"(C) the details of all financial arrangements, including all documents involved in the proposed acquisition;

"(D) detailed projections concerning the ability of the applicant to meet its long-term financial obligations and to maintain existing levels of network service;

"(E) the managerial expertise and financial resources available to all persons involved in the proposed acquisition;

"(F) detailed information concerning any intention, proposal or plan to liquidate or in any other manner dispose of the assets of the proposed acquisition;

"(G) any discontinuance, reduction or impairment of service to a community or part of a community that would result from the proposed acquisition;

"(H) the reasons that the proposed acquisition would benefit the public interest, convenience and necessity; and

"(I) any other information the Commission may reasonably require;

"(2) issue a public notice indicating that the information referred to in paragraph (1) has been filed and is available for public inspection;

"(3) afford any interested party a period of thirty days from the issuance of the public notice described in paragraph (2) to file a petition to deny pursuant to section 309(d)(1) of this Act or a supplemental petition to deny if one has already been filed; and

"(4) conduct a full evidentiary hearing pursuant to section 309(e) of this Act in which the Commission and any interested party may subpoena documents and witnesses and take testimony under oath on—

"(A) the matters referred to in paragraph (1);

"(B) any substantial and material questions of fact presented; and

"(C) any other issues pertinent to whether the proposed acquisition would serve the public interest."

○

The CHAIRMAN. Senator Pressler, thank you very much.

Senator Hollings.

Senator HOLLINGS. Senator Pressler, what bothers me is the thrust of your bill on hostile takeovers. Indirectly then, we say that all friendly takeovers are immediately approved by the Congress. In other words, with respect to the actions of friendly corporate boards of directors, we approve everything they do; but if it is hostile, then we disapprove, and we want to have an evidentiary hearing.

Then I look at your statement. And the hearing is to find out the character and the competence, and you and I both agree and CBS and Ted Turner have the proper character and they have competence.

What are you looking for in an evidentiary hearing?

Senator PRESSLER. Well, I think there is a basic difference. Where you have a hostile takeover, you have a very good chance that the entire mangement will be replaced.

Senator HOLLINGS. And is that the responsbility of the Congress?

Senator PRESSLER. No: it is not necessarily. But I do think where, in each case, a network owns several licensed stations and where we have the potential to completely replace management, I think it is very appropriate that the public interest be considered.

And let me say that I have supported many of your efforts to protect the public interest by continuing the Fairness Doctrine and the Reasonable Access and Equal Time rules.

But aside from the instant case, let's say there are hostile takeovers of all three networks some day, completely new people in them, I would want the FCC to hold an evidentiary hearing. I would want to be assured of an evidentiary hearing.

Now, I would not necessarily oppose one where there is a friendly takeover. The various cosponsors of this bill got together and agreed to legislation on hostile takeovers, but we would be willing to consider amendments with regard to friendly takeovers. However, these takeovers would not result in inevitable replacement of all the mangement. So I think there is a basic difference.

Senator HOLLINGS. I can see a friendly takeover that would agree to get rid of everybody in Charleston and Sioux Falls.

Senator PRESSLER. Personally, I would not necessarily oppose an amendment that would expand this legislation to include friendly takeovers also.

But the feeling of many of the cosponsors was that a hostile takeover would involve a much more dramatic change. Generally speaking, a hostile takeover will result in new management, and the very people the public was relying on one day might be gone the next. Now, the new management might be great. They might be better. Indeed, I am one who feels that if our steel industry had been taken over in the 1950s and if labor unions had cooperated, we might be competing in steel today. I am not against takeovers. I think sometimes management needs to be challenged, just as Senators are challenged frequently.

I do not think we are so far apart. I would remind my good friend from South Carolina that I have always supported his stand in protecting the public interest by retaining requirements such as the Fairness Doctrine. I have been a good supporter of yours.

Senator HOLLINGS. I will stop asking questions.

Senator PRESSLER. You make a very good point, and we did debate long and hard about the hostile versus friendly question. We felt there was a better chance in a hostile takeover that we would be dealing with *new* management and financial viability questions.

Senator HOLLINGS. I really, Senator Pressler, most respectfully, worry about the thing. You know, even without a hostile takeover, you know how powerful this crowd is. I have not been able to get hold of either one of them.

A little bit of regulation—as your comment indicates—is needed. We have had to fight to maintain the Fairness Doctrine. And Chairman Fowler and his team down there have veritably done away with anything for children or anything for minorities. They have deregulated everything they possibly can, so the horse is already gone out of the barn. And it is rather amusing. That is one of the things I want to see with CBS when they get here. They will be coming up here asking for regulation. They have been asking for deregulation for the 19 years I have been in this United States Senate. I just want to hear the man say it this afternoon.

So, thank you very much. I want to move on to him.

The CHAIRMAN. Well, before we move on, I do have a question that was suggested by Senator Hollings.

If the test is whether or not management is going to be changed—and that is my understanding of what you think should trigger an evidentiary hearing—why should a takeover be a matter of consequence?

In other words, let's suppose that the existing ownership of a TV station or a network decides that ratings are poor, and the time has come to clean house, and they want to just boot out everybody who has anything to do with the management of the network and replace them with somebody else. Should that trigger an evidentiary hearing by the FCC?

Senator PRESSLER. First of all the trigger is not necessarily a management change under this bill.

The CHAIRMAN. No. The trigger in this bill is a hostile takeover, but my understanding of your response to Senator Hollings was that the difference between a hostile takeover and a friendly takeover is that in a hostile takeover, the management is likely to change, and that is what should give us concern.

I was just wondering if instead of takeovers triggering FCC review, maybe any change in management should trigger FCC review.

Senator PRESSLER. Well, I do not think we could go that far. And let me say that a hostile takeover does not necessarily mean a management change, but it is probably the most usual and abrupt change.

The CHAIRMAN. But if that is what we fear, a change in management, why shouldn't we disregard whether or not there is a takeover and simply require FCC review if there is a change in management?

Senator PRESSLER. Well, I might not be totally opposed to that. The cosponsors of this bill felt the bill should be framed to require full evidentiary hearings when hostile takeovers are attempted.

You cannot have the FCC review absolutely everything. The feeling was that in terms of a network, it is so important to so many people, to so many affiliates across the country, that a hostile takeover almost invariably would mean a wholesale change of management and financial upheaval which should trigger a full evidentiary hearing.

The CHAIRMAN. In any event, your view is that what we should be concerned about is change in management.

Senator PRESSLER. Not necessarily. It depends. When there is a hostile takeover, there is likely to be a major change in philosophy or management, and if that occurs, I think that the public interest should be reviewed by the FCC.

And let me say that I am particularly tuned into that from my State of small cities and rural areas. I think we are on the verge of a period in our history where the large cities will dominate our elections and our culture. I think a minority, an unrecognized minority, exists in the smaller cities, sparsely populated counties, and rural areas of this country. And I think that is very much an issue here.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. No statement, no questions, Mr. Chairman.

The CHAIRMAN. Senator Pressler, thank you very much.

The first witness is Mark Fowler, the Chairman of the FCC.

Mr. Fowler, thank you for being with us.

## STATEMENT OF HON. MARK S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. FOWLER. Thank you, Chairman Danforth, members of the committe. I appreciate the opportunity to appear before you today to provide my views on S. 1312, the "Federal Communications Network Acquisition Approval Act of 1985." As you know, the Commission is currently in the midst of considering applications filed by Ted Turner in conjunction with attempt to take over CBS and by Capital Cities Communications and ABC in connection with their merger. Thus, this is a most timely subject for your attention.

I share many of the concerns that motivated the introduction of this bill. However, in all candor, I believe that it is unnecessary and would, if adopted, automatically work to place the government's thumb on the scale in favor of existing management and would shield management from the usual discipline of the free market.

Assignments and transfers of station licenses have been a feature of Commission experience since its inception in 1934, and our procedures governing friendly acquisitions are well-established. As you know, section 310 of the Communications Act requires prior Commission approval before a transfer of control of a licensee or before a licensee assigns its license to another party. Section 309 of the act provides, in most cases, that before an application for any broadcast license can be granted, the Commission must put the application on public notice and give an opportunity for any party in interest to file a petition to deny that application.

Currently, a party seeking to make an unfriendly takeover of a corporate licensee must file at some point a long form transfer application with the Commission which is subject to the public notice requirements and petition to deny process, with a full and extensive pleading cycle for all parties. Moreover, under section 309(e) of the Communications Act, the Commission must designate that transfer application for evidentiary hearing where there are substantial and material questions of fact as to whether the public interest would be served by a grant, or where the Commission is for any reason unable to find that a grant would serve the public interest.

Certain exceptions to these long-form procedures have been carved out under section 309 of the act. For example, under section 309(c), the formal petition to deny opportunities do not apply to applications where the transfer is "involuntary" or does not involve a "substantial change in ownership or control." Under 309(f), the Commission may grant a Special Temporary Authority, an STA, prior to the petition to deny process taking place where there are extraordinary circumstances requiring temporary operations in the public interest and delay would seriously prejudice the public interest.

In the recently decided Multimedia/Jack Kent Cooke case, the Commission granted an STA, Special Temporary Authority, to a trustee to collect the shares acquired in a tender offer. Cooke, the ultimate transferee, still has to undergo our long-form application process before he can take control of the licensee. As can be seen by our decision in this case, the section 309(f) exception would not allow anyone to acquire a license by a means of a tender offer without being subject to the full petition to deny process.

These existing long-form procedures seem to me to provide adequate protection to the public interest in the case of an attempted unfriendly takeover of a major broadcast network. Like the Network Acquisition Approval Act, the present requirements provide the public with notice and opportunity to participate and give the Commission the information necessary to determine whether a hearing is in order. However, these existing provisions also recognize that a requirement to conduct an evidentiary hearing where there are no material and substantial issues to be resolved would unnecessarily waste time and consume scarce Commission resources.

I believe that the distinction made by the legislation—to require a hearing any time the takeover is unfriendly, but only where there are material and substantial issues when the takeover is friendly—in effect triggers our procedures simply because the network's board of directors does not favor the acquisition.

Moreover, since these evidentiary hearing requirements allow a board to use the Commission's procedures as a high obstacle between the shareholders and the party making the tender offer, they may cause the Commission to intrude on policies established under Federal securities laws and state laws regarding corporate governments. The result is that private individuals will be making the policy decisions to proceed with an evidentiary hearing properly in the purview of the government.

Moreover, since this allows the board to use FCC processes to effectively deprive the shareholders of their right to sell their shares, it would appear to be inconsistent with the Commission's determination in the Storer case, affirmed by the court of appeals, that ultimate control is vested in the shareholders of a corporation.

By the same token, if, as provided in the bill, the Commission is to be required to concern itself with the effect of high debt load on a licensee's ability to provide program service, I see no public interest reason to distinguish between cases in which the debt load is incurred in the course of an unfriendly takeover attempt and those in which it results from a friendly takeover, a leveraged buyout, or merely because a licensee voluntarily chooses to take on high amounts of debt.

My own inclination in these matters is not to involve the Government unnecessarily in the management decisions of media companies unless a compelling governmental interest is shown. In my view, the existing standard provided to the Commission by Congress for determining whether a hearing is necessary is preferable to that proposed, in that it affords the Commission the flexibility—within the bounds of a clear standard—to determine when a hearing is necessary and what issues will be relevant in it.

If I may, let me review the Commission's actions in past cases involving attempted mergers and acquisitions of major networks. When Paramount Theaters and ABC entered into a merger agreement, the Commission held 93 days of hearings to determine whether grant of the relevant applications would be in the public interest. Several years later, assignment and transfer applications were filed in connection with the attempted merger of ABC and ITT. The Commission held 2 days of en banc hearings in September 1966, and, 3 months later, approved the merger. As a result of the Department of Justice's request to intervene and for reconsideration, the Commission stayed the matter and, in April 1967, held evidentiary hearings in which a substantial hearing record was compiled. In 1968, when Howard Hughes attempted a takeover of ABC, the Commission informed Hughes that a hearing, the nature of which would be determined by the Commission at a later date, would be required before he could complete his tender offer. The Hughes application was not prosecuted further.

Now the Commission is faced with two attempts at network takeovers—one friendly and one unfriendly. Consistent with our past practices in these matters, the Commission will give these applications a thorough review. On August 1 and August 2, we will provide an opportunity for oral presentations to the Commission in the CBS/Turner matter, so that we will be able to further explore the issues raised in the pleadings. These en banc hearings will neither constitute nor substitute for an evidentiary hearing to the extent that one might be required by the Act. Following these hearings we will determine whether there are substantial and material issues of fact requiring an evidentiary hearing.

In the *ABC/Cap Cities* case, the period for filing petitions to deny has not yet ended. If we receive petitions to deny similar to those filed against the Turner application, we will consider them carefully, and make the determination as to whether an evidentiary hearing is required. We will give that transfer full scrutiny before final Commission action is taken. In sum, I do not believe that new legislation is needed to assure that the Commission discharges its responsibilities in conformity with the Communications Act.

It could be argued, then, that the Network Acquisition Approval Act, to the extent that it is somewhat duplicative of existing provisions, is merely an insurance policy and, as such, does no harm. But it is not merely duplicative. As to substance, it does require the Commission to consider issues we now do not consider or which we have found to be outside our purview. Moreover, as to the procedure, it can cause untoward results, weakening existing government policies of not discouraging takeover bids which are said to "serve a useful purpose in providing a check on entrenched but inefficient management," and of taking "extreme care to avoid tipping the scales either in favor of management or in favor of the person making the takeover bids." These policies derive from congressional action and policy, reinforced by findings of the Supreme Court.

Additionally, the most recent report of the President's Council of Economic Advisers devotes an entire chapter to takeovers. It concludes that "mergers and acquisitions increase national wealth. They improve efficiency, transfer scarce resources to higher valued uses, and stimulate effective corporate management. The public has a legitimate interest in the continued strength and vitality of the market for corporate control."

The Network Acquisition Approval Act, by mandating the provision of extensive amounts of information and a hearing in which "any interested party may subpoena documents and witnesses," will necessarily cause delay and could well derail any attempt at a takeover of a major network. For instance, where financial institutions have agreed to fund a tender offer, they typically will impose substantial standby fees on the party attempting the takeover in return for tying up the money to be used in the attempt. The longer the delay, the higher the charges. At some point, such delay becomes so costly that no party will entertain any thought of taking over an entity cloaked in such protection.

Indeed, some corporate management in the past appear to have actually purchased FCC regulated media properties simply to protect themselves from future hostile takeover attempts. Thus, I believe that the Network Acquisition Approval Act, while expressing concerns that we all share, can in effect become a congressionally prescribed "poison pill." My understanding of the subject area suggests that such a result would be contrary to the longstanding congressional policy.

In sum, while I share your concern that takeovers of major national broadcast networks not occur without adequate Commission scrutiny, I do not believe that new legislation is necessary. Instead, I believe that the Communications Act, as it currently exists, well protects the public interest in both hostile and friendly takeovers of broadcast licensees.

I would be happy to respond to any questions that you might have.

The **Chairman**. Mr. Fowler, thank you very much.

The FCC now has the power under certain circumstances to deny an application for the transfer of ownership of broadcast properties; isn't that correct?

Mr. **Fowler**. Yes, Mr. Chairman.

The **Chairman**. What are those criteria, and how do those criteria differ from what is in this bill?

Mr. **Fowler**. We have some broad categories that we look at. The overarching standard is whether or not a grant of the application would serve the public interest, convenience, and necessity.

The **Chairman**. That is essentially the same standard in the bill; correct?

Mr. **Fowler**. Correct. Under the bill, there are some areas where information is called for that we do not require that information.

The **Chairman**. I am not talking about information that is called for, but rather, what criteria would be used by the Commission now for denying an application to transfer ownership, and how do those criteria change under the bill?

Mr. **Fowler**. Essentially, Chairman, we would ask for information concerning their legal qualifications, financial qualifications, and EEO requirements that is a prospective EEO program. Principal among the legal qualifications would be whether or not they are citizens of the United States and whether or not they have violated any Federal or State laws, antitrust laws, committed fraud, been involved in those kinds of activities, going to character.

Now, under this bill here, I think it is fair to say apparently they use the same standard that is ultimately the public interest, convenience, and necessity. But as I said before, there is a good amount of information that they call for that we do not call for, and the bill requires an evidentiary hearing on these same subjects. Now, the ultimate standard, it seems to me as I understand the bill, is the same—the ultimate standard.

The **Chairman**. Isn't one change that under the existing criteria, the Commission has to be satisfied that the applicant has the ability to maintain a degree of financial strength for 90 days?

Mr. **Fowler**. Yes, Chairman.

The **Chairman**. Whereas under the bill, there is no time limit on that requirement.

Mr. **Fowler**. It is not clear what the time limit is, but it is very clear that there is a lot of information called for; for example, detailed projections concerning the ability of the applicants to meet long-term financial obligations.

The **Chairman**. Is it your view that basically the same things that the Commission looked for under the present law would be the criteria that would be used under the new law?

Mr. **Fowler**. Yes, sir, except more information and issues.

The **Chairman**. Yes. But I am not talking about the information; I am talking about the standards that you would use for denying the application.

Mr. **Fowler**. That is essentially correct.

The **Chairman**. Essentially the same.

Mr. **Fowler**. Yes, sir.

The **Chairman**. Do the same procedures exist for the transfer of ownership of any broadcast property as exist for the transfer of a network? That is to say, if the ownership of KWOS in Jefferson City, MO, were to be changed, does the same procedure exist under the present law for that radio station in Jefferson City, MO, as exists for the transfer of CBS?

Mr. FOWLER. It is important to note that we do not have any direct jurisdiction over the transfer of a network. The jurisdiction derives in this case from the fact that CBS owns broadcast stations, and therefore an effort, for an example, in this case to effect a hostile takeover of CBS would require the Commission to grant its consent to the transfer of control of these broadcast licenses to the offeror.

In that respect, those procedures, with your other example in Missouri, would be the same identical—the same requirements.

The CHAIRMAN. First, don't you think that if the FCC has to review the transfer of a radio station in Jefferson City, it should also have to review the transfer of a network? And do you believe that the criteria for determining the transfer of a single radio station should be the same as the criteria for determining the transfer of a major network?

Mr. FOWLER. Again, to the extent that we are involved, we are involved under the act, Chairman Danforth because in this case CBS owns broadcast stations.

The CHAIRMAN. I understand that. I am just asking, as a matter of policy, is it good policy? You have a pending case. I do not know that it is appropriate for you to comment on it, but if it is, I would be curious as to whether the same standards should apply to radio station KWOS in Jefferson City as apply to CBS, which is only covered by this review process because it owns broadcast properties, not because it is a network.

Mr. FOWLER. And I will answer that. I have to be careful because we do have, as you observed, this case before us. But generally speaking, the same legal standards apply. Now, some of the issues clearly that are involved, where a network is involved as part of the transfer of broadcast licenses, clearly raise question and issues in my mind that are not raised in the example of the single radio station.

In particular, it raises questions regarding national competition and also with respect to diversity of ideas; that is, diversity in the marketplace of ideas.

The CHAIRMAN. Do you review that now?

Mr. FOWLER. I am saying that could be raised in a case where a network is involved. I do not want to respond to you and tell you how we might resolve that because we will be looking at this in this case that is pending, but clearly those kinds of questions are raised.

The CHAIRMAN. Does the law provide for review of diversity of ideas by the FCC?

Mr. FOWLER. Yes, sir; it does. It is essentially subsumed within our multiple ownership rules, of which there are several.

One is a national ownership rule, the rule of 12, which you are well familiar with. We have other rules relating to local ownership. We have cross-ownership prohibitions involving television stations and newspapers, cable systems and the like. All of that goes toward diversity and competition.

The CHAIRMAN. Well, that goes to size and competition, but it does not go to reviewing the ideas, if any, that are held by the people who are operating a TV station or a TV network.

Mr. Fowler. That is correct, sir. We do not look substantively at the viewpoints of a prospective buyer, but simply whether or not that proposed transfer might significantly limit diversity of ideas or significantly lessen diversity of viewpoints in the broadcast area.

The Chairman. Senator Pressler?

Senator Pressler. I was intrigued with the length of time of some of the hearings you cited that have been held in the past. Isn't it possible, with today's computers and cross-indexing, that these hearings could be speeded up a great deal?

My basic feeling is that I would not want an evidentiary hearing to hold up the free enterprise system. But why do these hearings take so long?

Mr Fowler. Well, unfortunately, I do not think technology could do too much to speed up a typical evidentiary hearing. The length of a hearing is dependent on many factors, if I could just enumerate a few.

One is the number of issues that are involved; the complexity of those issues; whether it requires expert witnesses; the number of parties. And these elements basically will, in a large degree, determine how long a hearing is or is not.

Now, there is nothing technologically you can do to change those factors in any significant way.

Senator Pressler. Now, what would you consider a compelling Government interest? I am trying to understand the present standard.

A lot of affiliates depend on network support, a financially healthy network for support and in my part of the world at least, with the agricultural problems we are having and so forth, the economy is pretty uneven. As I understand it, presently the standard is, whether there is a material or substantial question of fact which should trigger a full hearing?

But what do you consider a compelling government interest?

Mr. Fowler. I would consider that to be a demonstrated need that the Government ought to intervene in the matter, and that otherwise the public interest would suffer, absent that intervention. That is, that marketplace forces in this case would not be sufficient to protect the public interest.

Senator Pressler. So would you say there is a substantial or a material question of fact in hostile network takeovers?

Mr. Fowler. I do not want to comment on that, because again that is—I am much like a presiding judge in the CBS/Turner matter, Senator Pressler, and I am afraid I cannot answer that directly, sir.

Senator Pressler. Thank you.

The Chairman. Senator Hollings?

Senator Hollings. Do you think the television networks should be under the Communications Act?

Mr. Fowler. No, sir; I do not.

Senator Hollings. You mean to tell me that the Federal Communications Commission wants to regulate my little station down there in Charleston with respect to programming, with respect to minorities, with respect to children and all the other things but the real controller—CBS—that controls everything down there, the major controller of programming and the children's programs and all these other things like that that have a majority influence over the entire broadcast—should not be controlled. Why is my little Charleston station of Federal import, but the networks are not? Is that what you are telling me?

Mr. FOWLER. I think what I am saying is that it is not a question of whether or not the networks ought to be regulated, but whether in fact those broadcast stations ought to be regulated, as provided for in the act.

Senator HOLLINGS. You don't think that a station should be regulated?

Mr. FOWLER. My view, sir, is that competitive forces are fully sufficient, by and large, to assure that the public interest will be served.

Senator HOLLINGS. So WCSC, the little CBS affiliate, small station in my hometown, that should not be regulated, and therefore there should be any regulation over any station?

Mr. FOWLER. No, indeed. I think there should be regulation in some areas relating still to ownership matters, particularly at the local level. I think there are some needs for protecting competition there. I think there should be technical regulation, to protect against interference, for instance. I do not think there should be any content regulation.

Senator HOLLINGS. How do you mean ownership at the local level?

Mr. FOWLER. For example, I think it is premature to permit somebody to own all three television stations in Charleston, SC. If you had 100 different channels, that might be possible; but I do not think that is possible in the present market structure—and still have workable competition.

But we do not see any evidence that there is not very vigorous competition in the business of networking; that is, providing programming to stations. And, if anything, Senator, I think it is becoming more competitive. We are fostering that; we think it is in the public interest.

Of course, sometimes incumbent players do not like it when you foster new competition, but I think that clearly is in the public interest as well.

Senator HOLLINGS. I commend you for your prepared statement. I generally agree. You have played it straight and gone right down the middle in the CBS-Turner matter.

I have some concern about how you handled the Jack Kent Cooke case where a trustee procedure was used. I can see where a trustee gets a majority of the stock allocated and kicks out the board, and then you have your hearing at the FCC to find out if the principal is worthy or not of a license. And then you determine he is not.

How does a trustee put it all back together?

Mr. FOWLER. Well, in a publicly held corporation, I do not think you really have that concern, Senator Hollings, because in a publicly held corporation, if someone tenders an offer to me as a publicly held corporation shareholder, I will give you $60 for your shares of stock. I have 100 shares; I sell it to him because I want that consideration. I am not looking to get my stock back. I've made the choice not to be a shareholder in that corporation any more. Once I tender, I am happy; I have got my funds and he has got the stock.

Senator HOLLINGS. But you and I both agree, it is the public interest on the actual broadcast and programming that is vital. We are not trying to help people make money or deter people from making money. We are trying to look at the continued public service of that station because it has been licensed for that.

I think there would be an undue pressure on a trustee, because you have already sort of preempted your decision when you let the trustee be appointed, because if it really succeeds, then you have got to approve the principal. I mean since you have approved the trustee, you better approve that principal, or else the incumbents have already been kicked out and you have really destroyed the property and the public service is what I am saying.

Mr. FOWLER. It is not correct to say that if we approve the trustee, we have to approve the ultimate buyer. If we decide, based on the record, that he is not qualified to be the ultimate licensee, we will deny the application. Then the trustee will be ordered to dispose of that stock on an expedited basis. He has two choices. He can sell it in the market because it is publicly traded, and the person who is backing him—that is, the ultimate purchaser—may take a beating between what he paid when he tendered his offer and what he gets when the trustee sells that stock back in the marketplace, or the trustee can sell that block of stock to another purchaser who would have to file a long-form application with the FCC.

But because it is a publicly held corporation—I think this goes to your quite good and excellent question—essentially the control is not changed, because during the time that the trustee is in charge, we require him to be a caretaker; that is, not to make any significant changes in the management or operations of that publicly held company. That is a restriction and a condition we place on that trustee. So the Board and management stays in place. The operations should stay the same.

So I think that goes to your concern that there is not instability created as this administrative process goes forward with respect to the broadcast entity.

Senator HOLLINGS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

Chairman Fowler, I am not a sponsor or a cosponsor of this legislation and I am also not sure about all the different sides between Turner and CBS. But you a stated in your conclusion that you believe the Communications Act, as it currently exists, protects the public interest in both hostile and friendly takeovers. And I think that what we are faced with is a process that you are either going to make work in a way that is going to demonstrate there is in fact no need for this legislation, or a process which somehow breaks down and a consensus developes on our side of the table that there will be a need for legislation.

So I would like to ask a couple of process questions. Now, my first question is, how do you determine shortform, long-form, evidentiary hearing, whatever? Is that a consensus, or do you have a vote among your five Commissioners?

Mr. **Fowler**. As to?

Senator **Kasten**. As to what process is followed? How are you going to decide if you are going to have, for example, an evidentiary hearing on the Turner/CBS question? Are you going to vote on that, or do you determine that as a group?

Mr. **Fowler**. I would like, if I could, just to talk generically and keep away from CBS/Turner. But as a general matter, Senator, we would determine what the issues were which had to be answered by the Commission in order to make a public interest finding.

After doing that, we would look at the record before us; that is, the applications and the information contained therein; all of the petitions filed against that application, and, of course the record, if we were to have designated for evidentiary hearing. And based upon all of that evidence, we would then determine whether we could grant that application or not.

Senator **Kasten**. But you would look at the record and then you would decide by a vote whether you want to go forward with an evidentiary hearing?

Mr. **Fowler**. Yes. That would require a Commission vote.

Senator **Kasten**. Let me back up, then. You have now scheduled the en banc hearing for the Turner/CBS question. I understand that is scheduled for the beginning of August.

Mr. **Fowler**. Yes, sir.

Senator **Kasten**. You also told the House subcommittee that the Turner application could be acted upon by early September. Now, did you say "could'? I am assuming you said "could" because the short time between August 1 and 2 and September would indicate to me that you have decided that there will not be an evidentiary hearing on that particular case.

Now, do you want to emphasize the "could" for me, or do you want to explain to me the system?

Mr. **Fowler**. I think we could get it by September, and a review of the transcript, Senator, will show that I then went on to say, of course, if we were to designate the matter for evidentiary hearing it could take significantly longer. I said we could act—by that I meant either grant the application, designate it for hearing, or ask for additional information. So I do not think we have prejudged the question, which I think is your real question, as to whether or not an evidentiary hearing would be required in that matter.

Senator **Kasten**. Is the en banc hearing one step along the way to determing whether you need an evidentiary hearing?

Mr. **Fowler**. That is correct.

Senator **Kasten**. Now, it is my understanding that it would be possible for the Commission to still grant permission to proceed on a preliminary basis. In other words, to go to a trustee.

How do you make that decision? Is that once more a vote? What process do you go through in order to get to the point where Multimedia is now, where McCarthy has been proposed as a trustee? How did the Commission move to that point? What process would you go through if you were to grant preliminary approval in Turner/CBS? Could you do it the same way?

Mr. **Fowler**. It could be acted upon at the staff level, having effectuated a decision in Multimedia which involves a two-step process. However, if the staff were to feel that there were novel questions presented with respect to another filing—I am not going to necessarily say CBS/Turner—they have the discretion to then send it to the full Commission. In fact, under the delegation rules, if indeed it is clearly an application that presents novel questions of law, policy, or fact, then they have to buck it up to the full Commission for a decision.

The Commission then looks at the recommendation of the staff on that matter and makes a determination. It can either be in a public meeting or it can be circulated. Generally these matters would be decided in a public hearing or a public meeting. We would then vote on it, and then that would be our decision.

Senator KASTEN. If the Commission were to proceed with preliminary approval before August 1 or 2, in the case of Turner/CBS, then would you cancel the en banc hearing? It seems to me these hearings would be meaningless because you have given preliminary approval. Or would the en banc hearing still go on, and could an evidentiary hearing still go on?

Mr. FOWLER. Again, I do not want to talk about CBS/Turner; although I would note there is no Turner trustee application now on file. But in a circumstance where there is a long-form application on file of someone proposing a hostile takeover of a publicly held company, and if they were to apply for special temporary authority to in fact mount a hostile tender offer, with all of the conditions and restrictions that are contained in the Multimedia case as to the trustee, that does not in any way negate the need for an en banc hearing and a further determination by the Commission as to whether an evidentiary hearing would be required with respect to the long-form application.

Senator KASTEN. In that case, though, couldn't you say that this would be looked upon by the public as approval of the merger, if you will? In that kind of a case, couldn't you say that approval would then lead investors or outsiders or whatever to say, the FCC says it is all right, and therefore the process would be expedited at a more rapid rate?

In other words, wouldn't you, by going through the procedure you just outlined, in a sense be taking sides before you had held either your en banc or evidentiary hearing?

Mr. FOWLER. I do not believe so, Senator.

Senator KASTEN. I do. Explain to me why you disagree with me.

Mr. FOWLER. Well, in the case of a trustee who is tendering an offer for cash, if the shareholder wishes to sell, he will sell and can sell, whether or not the ultimate purchaser is granted authority by the Commission or not.

If there is an offer made which involves, for example, paper, notes, or other debt instruments, and it depends upon the ultimate purchaser achieving control of the entity from which the proceeds will be used to redeem those bonds, then in that case an investor probably—or might well not take the offer at that time, and wait until ultimate approval is given to the ultimate purchaser and they have control of the entity.

But all investors, I think, will be quite aware of that circumstance; that is, whether or not it is a cash offer, which in that case means it is irrelevant as to what the Commission might or might not do with respect to the long-form or ultimate purchaser application, and a different circumstance where there are paper debt instruments involved.

And I am quite confident that in that case, marketplace analysis by Wall Street analysts, would make it quite clear in a given circumstance as to whether or not somebody ought to tender their stock or not.

The Commission also makes it clear—and I should make this very clear—that when we grant a special temporary authority to a trustee, we take no position as to the merits of the tender offer, and that does not mean one way or the other that the Commission will ultimately grant the long-form application of the ultimate purchaser.

Senator KASTEN. My time has expired, Mr. Chairman. There may be a chance for other questions. But it just seems to me that any of these steps along the way is a Good Housekeeping seal or an FCC seal of approval on the process. And it would seem to me that maybe because of that, we should to be insisting on an evidentiary hearing in all cases.

Mr. FOWLER. Well, I think that if you do that, an automatic evidentiary hearing makes it impossible, in our view, for many tender offers to proceed forward. We do not think that is sound pubiic policy, and I do not think that a Commission grant of the interim step to a trustee will be seen by anyone—certainly not by the agency, Senator—which is your concern—as giving a seal of approval to the long-form final application.

Senator KASTEN. Mr. Chairman, my time is up.

The CHAIRMAN. Senator Ford.

Senator FORD. Mr. Chairman, I just have one question. I think other Senators have touched on some interests of mine. But, Mr. Fowler, I am somewhat concerned with the Commission's 90-day standard for financial viability, particularly in the context of a network acquisition because it is large and costly.

At his confirmation hearing last week, Mr. Patrick was asked if he thought there was a difference—and I think this has been alluded to, but I want to nail it down a little bit closer—between the transfer of a small radio station and a major television network in terms of looking at the financial qualifications of the company seeking to take over the network. And Commissioner Patrick thought that there was.

Would you agree with Commissioner Patrick's statement?

Mr. FOWLER. Senator, I looked at that transcript. I did not see that he said that. But——

Senator FORD. That sounds like the most powerful 2 minutes every evening as between the two commercials between six and seven.

I thought I asked that question.

Mr. FOWLER. Well, I can answer it anyway, to this extent; to say that one of the issues we have asked to explore in the en banc hearing on August 1 and 2 is whether or not Mr. Turner is qualified financially.

Now, obviously, I think the Commission will want to determine in looking at that what the proper standard should be. I cannot give you any answer on that, because I think again we will be prejudging that case.

But I agree with you, if you are saying that the difference between transferring a single station in a market and station involving a network ought to be considered as two quite different things.

And as I indicated before, I think it can raise questions involving competition and diversity in the marketplace of ideas when it comes to a transfer involving a network, which would probably not be the case with respect to a single station.

Senator FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Inouye.

Senator INOUYE. Thank you very much, Mr. Chairman.

Chairman Fowler, please indulge me. I will read from the prepared text of Mr. Thomas Wyman, the chairman of CBS.

> Unfortunately, some FCC officials have not been entirely successful in maintaining a kind of neutrality that really is important—the appearance of objectivity and impartiality in the consideration of public interest arguments that are presented to the agency. From the outset of the current rash of takeover attempts against communications companies, these Commission representatives have issued a series of unofficial press statements designed to provide encouragement to potential corporate raiders and their supporters.
>
> As far back as March, long before the Commission itself gave any consideration to the procedures to be followed in hostile takeovers, senior FCC officials were quoted in the newspapers as laying out strategies and "road maps" for the quick effectuation of corporate takeovers. After Turner Broadcasting's lawyer visited the agency to advise the Commission of its planned filing, these same FCC officials were quick to tell the press that the proposed takeover of CBS was "do-able" and wouldn't encounter "any FCC problems."

Is there any validity to this statement?

Mr. FOWLER. Senator, I have no way of knowing, because I think that article dealt with an unnamed source, but I certainly agree with Mr. Wyman. I am certainly not an adversary of his on this point. That is, that we both agree that it is important and vital that the Commission's processes be as fair and as impartial as we can devise. And I am dedicated to that.

And I think that we have indeed been fair and impartial in this matter, and we will continue to be that way, and if there comes to my attention any allegations of substance which indicate that there are any improprieties or irregularities, then I would not hesitate to initiate an investigation.

Senator INOUYE. When these statements appeared in the press, did you investigate them?

Mr. FOWLER. Not that particular one. But I would like to note, since I have briefly looked at Mr. Wyman's testimony—and I think it is important, since he is making some allegations which essentially allege that the Commission's processes are biased and tilted against CBS—and this is based upon a letter from their counsel, Mr. Vradenburg, who cites some specific examples of FCC sources saying things regarding the CBS/Turner matter and how this, therefore, shows some sort of a bias on the part of the agency—again, I am not an adversary of Mr. Vradenburg either on this point; we both agree.

But I asked my staff to look at the factual circumstances underlying these allegations in the letter, and I find that in every case it is factually wrong. His factual basis is incorrect. I do not know if it is necessary for me to go through each one of those—one, two, three, four, and five—but an example here is, Mr. Vradenburg, in a July 15 letter, says that he was concerned to read a report in Saturday's Washington Post that, according to an FCC official the Commission plans to permit Turner to use a voting trust technique in his takeover effort.

The Washington Post article does not refer to an FCC source. I do not know of such a source myself personally. It seems to me that is grossly incorrect, as a matter of fact.

Then, he goes on here to quote that his concern was heightened by "this morning's report that the Commission will address the CBS trust proposal very promptly, perhaps as early as July 18."

That is, Senator Inouye, a partial quote of some comments that were made by James McKinney, who is sitting here on my left, at a public news conference. And he was asked how quickly, in theory, the FCC could act on Turner's petition for a trustee after the CBS reply came in, and he responded by saying that, in theory, the Commission could act on it as early as the next day—in theory.

They asked him, how long in fact will it be before the Commission acts? And he refused to be drawn into answering that question.

Now that, it seems to me, distorts and is a misunderstanding of what Mr. McKinney said.

He, in a footnote on the first page, says that, "Indeed, without even waiting to review CBS's comments on this matter, a responsible FCC official was quoted in this morning's Broadcasting Magazine, as already concluding that there was no legal reason the Bureau couldn't grant Turner's short-form application. "Thus," Vrandenburg goes on, "it is apparently believed that the important and novel issues in this case may not warrant the attention of the Commissioners themselves."

I checked with Mr. McKinney on this, and his recollection of what he said was, that there was no legal reason we—that is, the Commission—could not grant Turner's short-form application. No "legal reason," I stress. And he checked with the reporter, and the reporter has some doubt as to whether Jim used the word "Bureau," that he well could have used the word "we."

So I do not think, therefore, looking at that, that that is factually correct, although that certainly is not Mr. Vradenburg's fault if there might be a misquote.

The next point here is the next page, the third page, he says that in early June, on the very day after the filing of petitions to deny, arguing that the CBS long-form application should be designated for an evidentiary hearing, an unnamed FCC official told Communications Daily that it would be "very strange" if such a hearing were held—referring to a full evidentiary hearing.

This is incorrect, because I looked at the Communications Daily article and the article does not say that that is an FCC source making that comment.

I have no knowledge that it is, myself, at all. I asked us all to look and make sure that we are not saying things that could be read or misinterpreted as being impartial.

Then, fifth, on the same page, Mr. Vradenburg goes on: "Now, on the very day that TBS filed its voting trust instruments, and the Commission invited CBS to comment on TBS's new short-form application, an agency official reportedly stated that the FCC plans to allow Turner to use the voting trust technique so he can proceed with his offer."

I looked at the Post article. It does not cite an FCC source. It says "sources say."

So, since Mr. Wyman, in his prepared testimony, has made this an issue, I thought that it would be important, Senator, to address that because this is the last opportunity I would have to do so.

Senator INOUYE. I think it is an important issue. It touches upon fairness, so I thank you very much.

Mr. FOWLER. Well, we are all dedicated, and we do not disagree with the thrust of Mr. Vradenburg's letter and Mr. Wyman's testimony that it is vital that we have fair and impartial processes. And I will continue to work to make sure that that is so for Members of the Congress and make sure that the process is right.

Senator INOUYE. Thank you very much.

The CHAIRMAN. Several Senators have indicated that they would like another round of questions, which is fine with me, if we keep in mind our four remaining witnesses.

Senator Kasten.

Senator KASTEN. I have one very brief question.

Mr. Chairman, is it your objection to the bill, and a reason that you may not have an evidentiary hearing in the case before you, your view that these procedures present a delay, and delay works in behalf of the establishment.

Is that essentially what you are saying?

Mr. FOWLER. I am saying that to automatically require an evidentiary hearing, Senator, where there are no material and substantial questions of fact, is a hearing searching for a purpose. That is, no useful purpose would be served by that hearing if you do not have any questions of fact that need to be answered.

Senator KASTEN. Have you ever considered getting both parties together and saying, we will hold a hearing but it is limited to 60 days, or it is limited to 30 days? In other words, trying to compress the process? Have you considered in the CBS/Turner business, getting them together and saying, let's do it, and get it over with in 30 days, or get it over with in 60 days?

Mr. FOWLER. Let me steer clear of that case, but generically speaking, there may be cases where it is vital or important for purposes of administering justice, to set deadlines. It sometimes may not be efficacious. The parties sometimes—as those who are lawyers in this room know—can make hearings more complicated: They can call more witnesses; they can insist on more expert witnesses; longer cross examinations, more exhibits. It is difficult sometimes to require the administrative law judge to meet a particular deadline, particularly if the issues are very complex, it may not be possible for him to do that.

But I guess the main point is that if an evidentiary hearing is not required, it seems to me to be an unnecessary use of the Commission's resources to have one.

Senator KASTEN. Thank you, Mr. Chairman.

Mr. FOWLER. Thank you, Senator

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Mr. Chairman, I shall just ask one question here.

Is it fair to say that hostile takeover attempts would almost inherently involve cataclysmic changes in management or financial structure such that they could jeopardize the network's ability to maintain existing levels of service to the public?

Mr. Fowler. Certainly, in the theoretical sense, it could. But where hostile takeovers are involved, people who are lending money to permit a hostile takeover to take place, or a person independently wealthy, has to be assured that once the business is acquired, that it will be able, from a business standpoint, to be able to return the investment.

And that means that the last thing in the world one would want to do, if you were taking over a network, would be to make your programming less desirable, drawing fewer viewers, losing cash flow. That is the heart of the networking business—providing the best program that you can over television stations in order to have the maximum profits.

And we have seen, in the case of some of the networks, that even where there is a minor deterioration, Senator, in their ratings, that that translates very quickly into a negative effect on their bottom line. So they have every incentive to make sure that the programming is the best it can be.

Now, that is not to say that it always works out that way. It certainly does not. But I think that the marketplace forces probably work pretty well there.

The Chairman. Mr. Fowler, let me ask you one question. The bill requires a great deal of information to be filed in the case of a hostile takeover. Do you believe that the information required by the bill is about right, or too little, or excessive? Is it too much paperwork, or too little?

Mr. Fowler. I think it is far too much. I would think that that is my view. I think it is unnecessary in large measure, Mr. Chairman. It is not necessary for the Government to be involved in some of these examinations. For example, the kind of management expertise you are going to have there, the investors are going to make that determination long before anybody else.

Information on their plans to liquidate or otherwise dispose of assets, I do not know if the Government ought to be involved in that unless there is a compelling reason why we should be. As a general matter, there might be an occasion where we should be, but I would leave that to the isolated case and not make it a general rule.

There are other questions here concerning financial resources available to all persons involved in the acquistion. I am not sure we need to have that information. Again, and it has been our experience since the beginning days of radio in the late 1920's, that we found that when someone was selling a property, the seller would make pretty sure that the buyer was financially qualified.

In the case of publicly held corporations, Mr. Chairman, the people who were lending the money, and others, make sure that that business post-takeover is able to service the debt. So I think to answer your question in the short, it is unnecessary to request a great deal of this information. We have been operating with far less, and I think that all of us would agree that where we can require less paperwork, the Government ought to do so.

The CHAIRMAN. Mr. Fowler, thank you very much.

Mr. FOWLER. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Thomas H. Wyman, chairman of the board and chief executive officer, CBS.

Mr. Wyman, welcome to the Commerce Committee. We are glad you are here.

Please proceed.

## STATEMENT OF THOMAS H. WYMAN, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, CBS, INC., ACCOMPANIED BY MR. WILEY

Mr. WYMAN. Thank you, Mr. Chairman. I would like to keep my remarks very brief. There has already been reference to my written opinion on this matter.

I would like to make two points as simply as I can and then respond to questions.

One of the issues clearly is why is it necessary to come to additional legislation. Senator Hollings, I agree with you that our position has been less is better than more. Our view is that it should not be, and that if the FCC were acting as it has in the past, as has already been suggested at these hearings, there would be no need for S. 1312.

It is clear that with a network takeover, and particularly with a hostile network takeover proposal, the issues are larger than the issue of a transfer of a station. That point has been made several times today. It is larger because is involves, indirectly but importantly, hundreds of affiliates. It involves the whole question of the delivery of information and entertainment, news to millions of Americans. It involves in a major way the public interest.

Historically, the FCC has seen that fact, I must deduce, as the basis for holding evidentiary hearings in every case where a network transfer of ownership has been involved. I think the only reason we are in the room today is that it appears at the moment—and I think you have already had some reflections of the issues in the hearing so far—it appears at the moment and it has appeared to us over several months that today the FCC sees its role less as a matter of monitoring the public interest in the sense I described to you than to provide the construction of a level playing field for the adjudication and for the facilitation of business interests competing for ownership of properties, both stations and networks.

I think that is an inadequate view of the role of the FCC. I think it is not the heart of the act which created the FCC. Our sense is that there has been a widespread impression that since the offer was made, the proposal was first introduced by Turner Broadcasting to take over CBS, and even a few days before the offer was made, that there was an atmosphere and an expression attributed to FCC personnel, fairly or unfairly, but often of facilitation, and that their role has appeared to many in the investment community, and in the public in general, and in the broadcasting community to be the role of helping to facilitate this process, certainly not to slow it down and in some cases perhaps even to suggest techniques as to how it might move more rapidly, the trust concept.

We have the sense that there is not a realistic possibility of evidentiary hearings over the months ahead. I wish I had a different view, but I do not, and I do not think that there are many who do.

It seems, against that background, that it is appropriate to support and to enact the bill before this committee. There has already been reference to the question of time delay. I can only second what I gather to be the sense of Senator Kasten's question. In our view it should be possible to hold evidentiary hearings over a matter of weeks and not months, and when over 300 different entities have filed quite formally with the FCC, suggesting that the financial structure of the residual enterprise might very well be such that the service which could be provided this country by that company would be at risk. That is a public interest issue, and that it seems to me is something that the FCC should be concerned about and examine in the kind of way that only an evidentiary hearing can provide.

Thank you very much.

The **Chairman**. Thank you very much.

The general question I have is what should the role of Government be? Should Government be in the business of trying to speed up or slow down hostile takeovers of businesses? Are networks in a different position than other types of business? And if they are, why are they? To what extent should the Congress or the FCC or anybody else in Washington be adjudicating the various claims of CBS or Ted Turner or anybody else who wants to be involved in taking over or trying to take over a network?

Mr. **Wyman**. Well, I think I would respond by saying that networks and the broadcasting business in general in all of its manifestations are different. I think they've been recognized as different by the Federal Communications Act and by the creation of the FCC, if you will.

I do not think it should be the role of Government to speed up or slow down the normal flow of marketplace activity. In this particular case where it seems that there has been a drift from the historic view of the FCC's procedure to be followed, it seems that some course correction, sadly, is appropriate and necessary.

The **Chairman**. A lengthy process of factual review, long questionnaires requiring inordinate amounts of material, if that is what the bill requires—I do not know if it does or not—that is the position of Chairman Fowler. But obviously, it would seem to me that putting somebody through the hoops of procedural requirements would operate as a delaying mechanism and that would tend to benefit existing management against whoever is trying to take over the network.

Mr. **Wyman**. Well, I think it is clearly a tradeoff, but let me put the timing question in this perspective. From our point of view, there is a large amount of information which the present process has already put before the FCC. We think that it would be possible to commence evidentiary hearings within a couple of weeks and conclude them by the end of September as an order of magnitude. The stakes being what they are, in our view that seems to be a not inappropriate investment of time to protect something which is quite special and important.

The **Chairman**. The bill says that the hearings should be held in all cases and that the Commission should review any other issues pertinent to whether the proposed acquisition would serve the public interest. What do you think that means and what should it mean? What do you think the Commission should review, and to what extent should it attempt to make judgments as to what type of ownership is in the public interest?

Mr. **Wyman**. I think in this case the issue is relatively simple, and unlike Chairman Fowler, I am willing to talk about this case. It is what I know best.

The issue is whether the resultant enterprise would be financially strong enough to be competitive and offer the kinds of programming that have seemed important and do seem important, I think, to millions of people across the country.

The filings presently before the Commission raise very substantial questions of fact. Let me take this chance to say I do not think it is a question primarily of management change risk. I think that that is a far less important subject than the issue of will the resources be available to the resultant enterprise to perform the public's expected service levels. And if they are to be reduced and if there is a risk that this enterprise could not survive, that the Commission must think about as it approves the application to proceed.

The **Chairman**. Do you think that the Commission should consider the quality of programming or the nature of programming?

Mr. **Wyman**. I think in this instance that is not the role. I think it is the capacity to deliver, not in terms of the individual, the taste questions, the quality questions of individual parts of the programming. I think it is the fundamental question as to whether the resources are there to be competitive in the marketplace and to provide a full news service and to provide a full competitive schedule of entertainment for the affiliates for the network, the complete network operation.

The **Chairman**. That is a qualitative decision that you think the FCC should be making?

Mr. **Wyman**. I think it is a sufficiency of resources decision and the questions of how the resources are devoted to the task. If they do not exist, the network cannot operate.

The **Chairman**. Senator Pressler.

Senator **Pressler**. Let me say in following up those questions that the bill, S. 1312, provides a fairly clear list of the things that the hearing would cover and the kind of information that it asks for. I believe the details of all financial arrangements, including all documents involved in the proposed acquisition, could be located fairly quickly. This measure does not just provide for a general fishing expedition, but the bill does have a clear standard. It is my feeling that it does not just say hold an evidentiary hearing that might go on for months.

Mr. **Wyman**. I could not agree with you more.

Senator **Pressler**. In fact, much of the information that is asked for in this bill could be provided in a matter of days, I would hope.

Now, the hearings back in the 1950's and 1960's that have been cited were longer, but we attempted to write this bill with a definition of what the hearings on the acquisitions are in such a fashion that it would not be a general lengthy fishing expedition. I think that that information could be provided easily.

Mr. **Wyman**. Senator, if I might, one additional piece of my view of the proper FCC role addressing quite specifically the matter of timing, I do think they have the right and the responsibility to organize and define within this very acceptable framework that has been cast in the bill the timing and the scheduling of the hearings, putting particular emphasis on the questions of fact which need evidentiary examination.

Senator **Pressler**. Yes. It is my strongest feeling with the kind of criterion we have outlined here with today's recordkeeping and communication devices that most of this information should be available in a matter of days, if not hours. I do not see why it would require a lengthy process. Nevertheless, the argument is made that this kind of legislation really would prevent the acquisition of a television network.

Mr. **Wyman**. Let me say if it would, if it could, I would vote against it. I would not be sitting before this committee. I think it is important that in the world in which we live and in the country in which we live that we are subjected to the forces of the marketplace in our ability to compete, and if we cannot, to be replaced after a thoughtful look that satisfies the Commission that the resources will be there for the continuation of the enterprise in new ownership and in new hands.

Senator **Pressler**. I appreciate that very much. Let me turn to the strength of the networks in terms of their impact upon affiliates. If the strength or the behavior of a network should change drastically, suddenly, would you give me a scenario on what impact that could have on affiliates?

Mr. **Wyman**. Well, shortly after the Turner proposal was made, I suppose the best reaction was the reaction of our own affiliates. They have come forward in very large numbers to express quite formally to the FCC their anxiety. And I would say that the heart of the matter is that they feel that particularly the news service and the core of the program time and daytime entertainment programming that is available to them as a consequence of being a part of the network, it is a very sensitive balance. If the quality of those services became less competitive, it affects them enormously in their individual markets in their capacity to sell the advertising locally and to operate in ways where they can put on their own programming, both news and entertainment and special features. They see it as a very high-risk question.

Senator **Pressler**. Now, a short form application is reserved for transfers of ownership not involving a substantial change in ownership or control. Do you think that definition applies to the current bid for CBS, Incorporated?

Mr. **Wyman**. No. I think this is a substantial change of control that is proposed. There is no question about that.

Senator **Pressler**. Well, what would happen, I mean with the substantial change of control, in your judgment?

Mr. **Wyman**. What would happen to the network?

Senator **Pressler**. Yes.

Mr. **Wyman**. Well, we have filed at great length—we are very concerned that, simply put, the debt burden, which is described in great detail in the Turner proposal, would be an unbearable financial burden to provide no room for flexibility to maintain the kind of services that we have today.

It also provides for the sale, requires and describes the sale of very large portions of the present CBS, including the radio stations, two of the television stations, and we would not be the same enterprise.

Senator PRESSLER. I have a red light.

The CHAIRMAN. Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

Mr. Wyman, you want the FCC to review whether or not Mr. Turner has the resources to run a network. How often has the FCC reviewed CBS to determine whether you have the resources?

Mr. WYMAN. Well, I presume not very often.

Senator HOLLINGS. Have they ever?

Mr. WYMAN. No; I do not believe so.

Senator HOLLINGS. And they never have because you are not under the act.

Mr. WYMAN. And they have never been in doubt.

Senator HOLLINGS. Well, you say they have never been in doubt. That is heartening.

You never have supported them ever bringing the network under the act, have you? Can you think of any circumstance other than right now where you would want the television networks under the Federal Communications Act?

Mr. WYMAN. History says you are accurate, sir.

Senator HOLLINGS. What does Mr. Wyman say?

Mr. WYMAN. I say you are accurate.

Senator HOLLINGS. So you cannot think of any circumstance other than to protect the board at CBS should the FCC have a responsibility here, but no responsibility to protect the viewers of CBS, do you?

Mr. WYMAN. Senator, with all due respect, the protection of the board at CBS is not very high on my list of concerns, and I hope I have not suggested that.

Senator HOLLINGS. Well, is that not what we are doing here now? In other words, you have not submitted this to the shareholders. You resist doing it, as I understand it.

Mr. WYMAN. In due course there is no question if it is submitted to the shareholders after review by the FCC, I think that is completely appropriate, and the shareholders will decide.

Senator HOLLINGS. If it is such a preposterous kind of bid, as you have described it, I do not see why you do not submit it. As I understand it, this whole proceeding—I said it was unnecessary—was to delay the review and action by the shareholders. But in any event, does any other network support you in bringing the television networks under the Communications Act this afternoon?

Mr. WYMAN. I do not know who else is testifying or what the other networks' position is on this particular bill.

Senator HOLLINGS. Did you ask them to testify in support of you?

Mr. WYMAN. No.

Senator HOLLINGS. Have they asked you not to testify here this afternoon?

Mr. WYMAN. It is not in support of us, Senator. It is in support of Senator Pressler's bill.

Senator HOLLINGS. Right. But have you asked the other networks to support you in appearing here this afternoon? The three networks usually pretty well put on a frontal assault here. We get all the networks. This is the first time I have seen just one appear.

Mr. WYMAN. Well, we are very careful, as you know, about excessive collaboration.

We are in a very competitive world.

Senator HOLLINGS. Have the other networks asked you not to appear?

Mr. WYMAN. No, sir.

Senator HOLLINGS. Have the stockholders approved your appearance here today asking for this legislation?

Mr. WYMAN. Well, it is not the sort of question which would be put to our shareholders, but I am persuaded and totally comfortable being here with their interest very much at heart and the interest of our real constituency, our viewers, also at heart.

Senator HOLLINGS. I see. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wyman, Senator Goldwater has some questions which he has requested me to ask of you. Senator Goldwater says as follows:

> I have supported deregulation of the broadcasting industry for a very long time. I have been consistent. I wrote and the Senate passed several important bills to deregulate television and radio. Now this bill will impose a new regulatory requirement on the Commission designed to frustrate, no matter what the circumstances, the takeover proposal. Why should deregulators like you and me, support this type of arbitrary regulation? Is not CBS being inconsistent? Why regulate?

Mr. WYMAN. Well, Mr. Chairman, I would hope that I have responded to that question previously. I wish I were not here feeling the need to support this legislation. In the normal course of events and in the past it would not have been necessary. But I think, sadly, there is evidence at hand that this type of review should be a requirement under the present circumstances.

The CHAIRMAN. Senator Goldwater's second question is:

> Mr. Wyman, why should the Congress get smack in the middle of this fight through this particular bill? We have the Communications Act which has had provisions governing evidentiary hearings on the books for the past 25 years. They seem to have worked well. We have a Federal Communications Commission which is accountable to us and reviewable by the courts. It has worked pretty well. The Commission has strongly supported the network's arguments for deregulation. Why should we second-guess the Commission on this issue before the Commission has had a chance to review the record? The oral arguments before the Commission will not even be held until August. Why should Congress inject itself into this?

Mr. WYMAN. Well, I think again the answer has been largely given, but let me add one point, fairly or unfairly, accurately or inaccurately, and there was a reference, two references to follow on what Chairman Fowler was saying before that FCC officials had spoken about the possibility of short form approval and the trustee agreement being implemented even this week. I think in that environment you have to believe that some additional steps to ensure the process operating on a more thoughtful basis are appropriate.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. I have just one question.

There is a lot of talk, Mr. Wyman, about whether the FCC is following through or not, and they have said they are going to do an en banc hearing as to whether or not to have an evidentiary proceeding. If they decide they are going to do it, that becomes one thing. If they decide they are not going to do it, then of course, the Congress could, I suppose, step in and force them to do it. But then these things always get down to a matter of hostile takeovers.

Well, I mean there are all kinds of takeovers, and they are not all hostile, but they all involve the public interest.

If it came down to the fact that the FCC refused to hold an evidentiary hearing and the Congress did intervene, would there not be reason for Congress to also require evidentiary hearings on nonhostile takeovers as well as hostile takeovers? Why should there be a difference? Why just because one is more exciting and more interesting to the public should there be a difference?

Mr. WYMAN. Well, I might quarrel with you about the virtue of excitement in this case.

But it is a very good question and one we have thought about a lot, and I think the essential difference is that there are special ingredients in the hostile takeover situation which suggest that in almost all cases, the structural, financial, resource reallocation situations are going to be dramatically different.

I would suggest to you that the FCC can and should in the instance of friendly change of control situations, that it clearly has and should use in its wisdom the discretion to call evidentiary hearings if there are substantive issues of fact which question the ability of the network to continue delivering its services and performing its public responsibilities. I do not think it precludes, but I think the requirement is probably appropriately imposed on as limited an area as possible. In this case, I think the definition of the hostile takeover probably covers 95 percent of the potential problem. So maybe that is a worthy ambition.

Senator ROCKEFELLER. I have one more question, Mr. Chairman.

The substance of so much of this seems to be the financial qualifications of Turner Broadcasting or fitness to do all of this. Nobody seems to be talking that much about the public interest. We are talking about the process of the Federal Communications Commission, hearings, and that is quite proper because that should be done in a proper way and Congress perhaps should not rush to prejudge.

On the other hand, what really is at stake here, it seems to me, is the public interest.

Now, let's separate aside for the moment what I would call news and public affairs. There is a certain percentage of TBS which is given to that, and there is also a certain percentage of CBS which is given to that. One could argue that one might be better than the other, and I will leave that aside for the moment, but it is not a dominant percentage of the day's fare.

The fact of the matter is that the day's fare is, I would think, mostly judged to be a fairly sorry matter, soap operas, violence, things which have been discussed, I suppose, in these halls and others.

I was working out on my exercise bicycle last night, and by definition therefore, being bored, had to watch television, and watched another network and its public affairs program in which I observed Barbara Walters interview at length Esther Williams.

Well, I have been through greater educational experiences in my life.

Now, that is the good side. That is public affairs and news. And of course, it is another network.

But my question to you is what is the difference, in your judgment, as far as the public interest is concerned, about whether CBS or TBS rules that airwave with respect to nonnews, nonpublic affairs programming? What is the difference?

Mr. WYMAN. Senator Rockefeller, I think there are two very distinct compartments, and the question you raise as to whether any broadcast—all broadcast entities are performing up to the standard that should be expected reasonably by the government, by the people, is a spectacular question for national concern. But it strikes me that that is a separate question from whether the resources are available to do the job, to set standards and live up to them. That is another matter.

If you do not have the resources, and if you are not in a position to compete and to provide the funds to produce programming, and it is obviously a very expensive world, then you cannot even have the discussion about how good you could be in the public interest.

And I think the function of this hearing, the purpose of this bill addresses the second only in a limited way.

Senator ROCKEFELLER. Oh, that is the function of this hearing, but you have not answered my question, and I understand it is a separate matter.

If one prejudges that the other party does not have the resources to do new, nonpublic affairs programming, then one goes into reruns, and then one argues about reruns. But on the other hand, I still am asking the question. I cannot prejudge whether or not Ted Turner has the resources to run a network on your scale or not, but were he to have that, what would be the difference? What is so much better in the public interest about what you do on nonnews and public affairs than what he might do if he did perchance have the resources?

Mr. WYMAN. I understand the question, but I think that the answer, as I see it, is that what is at risk in the possibility that a takeover can take place, a hostile takeover can take place where you have a crippled resultant enterprise, that whatever the appetites and taste levels and style levels are, if they cannot be realized for a lack of resources, then something important has happened to the potential public interest and the capacity to deliver improved and more interesting broadcasts

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hollings?

Senator HOLLINGS. Let me understand, Mr. Wyman, did I hear it correctly at the beginning of your testimony that you favored evidentiary hearing for all network takeovers?

Mr. WYMAN. No, as the bill describes, for hostile takeovers.

Senator HOLLINGS. Only for hostile takeovers.

Mr. WYMAN. Yes. What I was suggesting a moment ago, I believe, sir, was that the distinction in my mind is that that is the high risk area but that in any event, the FCC clearly has and would have if they felt there were issues of fact and issues of concern, that they would clearly have the opportunity in a friendly takeover to hold evidentiary hearings if they so chose.

Senator HOLLINGS. So they could, but you do not recommend evidentiary hearing, of course, for Capital Cities Communications takeover of ABC.

Mr. WYMAN. It does not appear from a distance that there are issues of concern between the parties, and the industry views it as an extraordinarily attractive and interesting, constructive arrangement which will be much in the public interest is my sense. I think it is going to be a wonderfully strong company, and that there is not a basis for concern on the part of the FCC, would be my observation.

Senator HOLLINGS. That is the industry's observation, and of course, it is the public observations that count. In all candor, if you took over Turner or Turner took over you or one of the others took over, you all have all proven your worth, your success. I have not looked to see whether you have made a profit or Mr. Turner is making a profit, but——

Mr. WYMAN. I could help you out with that.

Senator HOLLINGS. Sir?

Well, we thank you.

I just think that you have helped me. I said the hearing was unnecessary, but you have helped me at least get my foot in the door. I have got one good authority, the chairman of the board of CBS believes that under a certain circumstance, television networks should be brought under the Communications Act. And Chairman Wiley as for you, you have made history.

The CHAIRMAN. Mr. Wyman, thank you very much.

Mr. WYMAN. Thank you.

[The statement follows:]

### STATEMENT OF THOMAS H. WYMAN, CHAIRMAN, CBS, INC.

Mr. Chairman, my name is Thomas H. Wyman. I am Chairman and Chief Executive Officer of CBS, Inc. CBS has three base businesses—broadcasting, recorded music and publishing—as well as interests in the related fields of home video, movie production and other fields. CBS has its headquarters in New York and operates substantial facilities in several other states and around the world; CBS has over 30,000 employees.

Mr. Chairman, I would like to express my sincere appreciation for this opportunity to appear before the Committee and present the views of CBS Inc. on S. 1312. As you know, CBS fully supports the enactment of this important legislation.

The FCC historically has recognized that the networks form the core of the American system of television broadcasting and that transfers of network companies involve "fundamental issues far transcending in significance" those raised in routine station transfers. It is not surprising, therefore, that in every past case involving a proposed transfer of control of a television network, the Commission conducted evidentiary hearings to ensure that all relevant facts were fully explored. The issues involved in these cases are simply too important to be decided without subjecting the plans of a proposed new network owner to a "hard look" by the reviewing agency.

The proposed legislation would codify this past practice to the extent of ensuring that evidentiary proceedings will be used in hostile network takeover cases—the cases that are most likely to result in disruption of vital broadcast service to the nation. Specifically, the bill would accomplish two objectives. First, a corporate "raider" attempting a takeover of a television network and its owned stations must make full disclosure to the FCC and the public of its identify, financial arrangements and resources, any plans to discontinue service to the public or liquidate the company, and reasons why it believes the proposed acquisition would be in the public interest. Second, the legislation makes it clear that the FCC is expected to hold an evidentiary hearing so that these representations and other relevant facts can be fully tested.

This legislation is necessary to ensure that the FCC will continue to be attentive to its duty to protect the fundamental interests of the American television viewing public. Increasingly, some Commission officials have come to perceive their role in hostile takeovers as less one of safeguarding the public interest than as one of refereeing private disputes between competing business groups. They describe their function as that of a "neutral" arbiter—serving as neither a "sword" nor a "shield"—in corporate takeover battles. However, Congress did not charge the FCC with responsibility for protecting the commercial interests of broadcast executive or hostile raiders—or even of maintaining a "level playing field" for the conduct of their contests for corporate control. Instead, it expects the Commission to devote its energies to the protection of the public interest.

Unfortunately, some FCC officials have not been entirely successful in maintaining a kind of neutrality that really is important—the appearance of objectivity and impartiality in the consideration of public interest arguments that are presented to the agency. From the outset of the current rash of takeover attempts against communications companies, these Commission representatives have issued a series of unofficial press statements designed to provide encouragement to potential corporate raiders and their supporters.

As far back as March, long before the Commission itself gave any consideration to the procedures to be followed in hostile takeovers, senior FCC officials were quoted in the newspapers as laying out strategies and "roadmaps" for the quick effectuation of corporate takeovers. After Turner Broadcasting's lawyer visited the agency to advise the Commission of its planned filing, these same FCC officials were quick to tell the press that the proposed takeover of CBS was "do-able" and wouldn't encounter "any FCC problems."

Following the publication of these reports, I personally called Chairman Fowler to complain about these "cheerleading" activities and to present my view that such statements to the press represent a serious departure from the appropriate standards of professional decorum expected of a Federal regulatory agency in an adjudicatory proceeding. Ordinarily, as you know, these agencies are expected to provide parties with a fair opportunity to present their views before there is a determination of the outcome of the proceeding.

Unfortunately, there has been little improvement in the situation.

Since TBS launched its offer, there have continued to be unfortunate statements to the press from officials involved in the FCC's decision-making process—but now most of these statements take the form of "leaks" from unnamed officials. The effect of these communications has been to convey the impression that the agency has no real interest in the arguments presented in formal pleadings and has predetermined that Turner Broadcasting should be authorized to proceed without any real consideration of the substantial issues in this case.

For example, when TBS initiated its attempt to take over CBS, it filed the type of application traditionally utilized in significant transfers of control of broadcast licenses. Based on all past FCC precedent involving attempted takeovers of national broadcast networks, CBS believed that evidentiary hearings would be held on the very substantial issues raised by the Turner application (involving questions of the financial viability of the network and the effects of the proposed merger on competition and diversity). However, in early June, on the very day after the filing of petitions to deny arguing that the TBS "long form" application should be designated for an evidentiary hearing, an unnamed FCC official told a reporter that it would be "very strange" if such a hearing were held. Thus, long before the filing of opposition and reply pleadings—and with almost no opportunity for the agency to review the extensive petitions that had just been filed—this FCC representative advised the press that the ultimate question had, for all intents and purposes, been decided.

Recently, Turner Broadcasting decided to alter its procedural strategy. Thus, it submitted a short-form transfer of control application and proposed to use a voting trust in an attempt to secure an interim FCC authorization to acquire a controlling interest in CBS. Based on past FCC precedent, CBS believed that such an application (on which public participation is effectively precluded) was appropriate only for "insubstantial" transfers of control.

However, once again and even before CBS had an opportunity to respond to TBS' new application, a newspaper story quoted an FCC official to the effect that the agency "plans to allow Turner to use the [voting trust] technique so he can proceed with his offer." Moreover, another report citing an interview with a responsible FCC official indicated that Turner's application might even be granted at the Commission's staff level (an apparent suggestion that the important and novel issues in this case might not warrant the attention of the Commissioners themselves). Finally, there was even a report that the Commission might employ what is known as a "special temporary authorization" procedure to approve hostile takeovers.

Under past Commission precedent, this procedure has been limited to "extraordinary" circumstances where the initiation of temporary broadcast operations are necessary to protect the public interest. It would appear to be wholly inapplicable to a transfer of control of already existing, permanent broadcast operations such as those provided by CBS. The evident confusion in the Commission's legal theories has led to the agency's recent initiation of a Notice of Inquiry to develop overall policies to govern hostile takeover cases. However, in its apparent haste to accelerate the consideration of such proposals, the Commission has made it clear that it will continue to process and act on applications even before the inquiry is completed.

The effect of all this on CBS, and I would imagine on other established broadcasters as well, has been very unsettling to say the least. From day to day, it is impossible to tell what Commission procedures will govern attempted hostile takeovers. Past precedent is no longer a reliable basis for predicting future agency action. While the Commission says that it is interested in maintaining a level playing field, it provides no consistent basis for understanding the "rules of the game."

Moreover, and I say this reluctantly, the only theme that is constant in the various pronouncements and actions at the agency seems to be that its policies are formulated to achieve a preordained result: to approve the Turner Broadcasting transfer of control application (in one form or another as the changing strategies of TBS may dictate). In my judgment, this is not a reflection of neutrality or regulatory forebearance in favor of the free marketplace. Instead it seems to be an attempt to structure regulation to favor the hostile takeover—to find a way to make it happen. I attach to my testimony a letter from CBS' General Counsel to the FCC detailing the numerous instances of what we believe to be biased and irregular behavior on the part of the Commission.

Given this unfortunate state of affairs, it is quite appropriate that the Senate is now considering the adoption of special legislation that will require the agency to carry out its fundamental responsibilities to the public interest. Indeed, the CBS-Turner proceeding provides an excellent example of the weighty public issues that would typically be involved in network transfer cases.

In petitons to deny, informal objections and letters filed with the FCC, many radio and television affiliates from every part of the country and numerous religious, civic, labor, minority and public interest groups have joined CBS in presenting their views on questions of great policy significance. In order to give the Committee an idea of the number and breadth of these communications, I attach[1] a list of the over 300 entities which have written the Commission raising serious issues about the Turner proposal. the issues raised have included whether the TBS proposal will result in the financial ruin of CBS, whether the merger of CBS News and CNN would violate fundamental diversity principles and whether the CBS-TBS merger would diminish economic competition in the news and national television advertising fields. Turner Broadcasting has contested each of these issues. Indeed, the issues and subissues have been joined in detailed and systematic affidavits and declarations by expert witnesses on both sides.

In the absence of a hearing, there is no principled way for the Commission to assess the conflicting evidence and resolve the basic public interest questions. For example, on the basis of the current record, it would be arbitrary for the FCC to rule in TBS' favor on the financial qualifications issue. A hostile takeover of a national network that leaves the company in a highly leveraged position would clearly jeopardize the ability of the network to maintain existing levels of service to the public and destroy its ability to meet competition. Under intense pressure to satisfy short-term earnings goals, a debt-laden network likely would be forced to curtail expenditures for program development, eliminate non-profit producing programs and cut back on news. As service deteriorated and as affiliates, suppliers and key employees began to defect, there would be an inevitable drop in ratings and decrease in revenues. Ultimately, when the company could no longer meet its current obligations, the downward spiral would be complete.

I suspect you will agree with me that this is a very bleak picture. Yet there is substantial risk that a highly leveraged takeover would have precisely this effect. Given the enormous importance of the network to hundreds of affiliates and millions of viewers across the country, CBS believes that the Commission cannot assume this risk without having the benefit of all the evidence that bears on this issue. Unfortunately, it appears that at least one FCC decisionmaker has already determined that this is not necessary. In testimony before the House Subcommittee on Telecommunications, Chairman Fowler stated that there are no cases now before the agency in which serious questions have been raised concerning the effects of highly leveraged acquisitions on the financial viability and future broadcast performance of a licensee.

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[1] The attachments were not reproducible and are in the Committee files.

The public should not be forced to accept the risk that service could be lost or severely reduced without a full airing of all the facts. This legislation would promote the vital interests of American television viewers by ensuring that all relevant facts are thoroughly examined before any decision is made on a particular hostile takeover proposal. After all, the viewers will be the biggest losers if reliable public service is forced to take a backseat to inordinate debt service.

Critics of this legislation contend that to hold a hearing would delay a final decision in a hostile takeover case and thereby defeat the attempt. It is simply not true that an evidentiary hearing would necessarily block a takeover bid. Special procedures could be fashioned to help ensure that the Commission procedures themselves do not become decisive in resolving the merits. There is nothing noval or alien about the idea of expedited evidentiary hearings. The FCC should be fully capable of establishing a schedule for its Administrative Law Judge and reviewing staff that will make certain that its work is completed with satisfactory dispatch.

In closing, I would like to assure the Committee (as we have advised the FCC) that our company is committed to cooperating fully with the Commission in an effort to expedite the evidentiary hearing that the public interest requires in this case.

Thank you.

The Chairman. The next witness is Mr. Ted Turner, chairman of the board and president of the Turner Broadcasting System.

Mr. Turner, thank you very much for being here this afternoon, and thank you for your patience in waiting.

## STATEMENT OF R.E. (TED) TURNER III, CHAIRMAN OF THE BOARD AND PRESIDENT, TURNER BROADCASTING SYSTEM, INC.

Mr. Turner. Thank you very much, sir. It is a very great pleasure to be in this hall again where I have been on so many other occasions.

I have a lengthy written statement which has been submitted to the record. It contains all the points that our attorneys wanted to get in, but I thought that it would be best perhaps to refer to some of the things that came up today, and in reading and listening to the testimony so far.

Basically, what you see is just a small part of the CBS attack on us in their attempt to keep our offer from their shareholders, the owners of the company, and to entrench Mr. Wyman and his management team and preserve their positions.

As far as our financial plan is concerned, it is on file with the Federal Communications Commission. We are in front of the Justice Department, pursuant to Hart-Scott-Rodino requirements and of course, we are in front of the Federal Communications Commission. We have complied with every single requirement that has been established, and we continue to do so.

And as far as the financial viability of our plan, it has been studied carefilly by all the media analysts on Wall Street, and by the great vast majority of them has been declared to be a viable financial plan, which includes an 8 percent increase in program spending compounded over the next 9 years.

Now you saw today a little bit of the sort of disinformation and intimidation campaign that CBS has engaged in. But now they have gone and accused the FCC of improper treatment. I know that all of you on the Communications Subcommittee know, I have not been the greatest supporter of the Fowler FCC. I have filed against many of their deregulatory efforts. I am for the financial interest rule. I oppose letting the networks own programs. We opposed increasing the number of stations from 5 VHF stations to 12. For the past years I have attacked the sleazy, crummy, violent programming on the networks. I am not a member of that same establishment that is so happy about the Capital Cities-ABC merger which combines the 16th largest media company in America with the largest one, according to the leading media companies estimates by revenues in Advertising Age last month. I happen to be down at number 45. I am the 45th largest company in this business, and CBS is the 2d largest. It is interesting, too, that several years ago the president of the CBS broadcast group, Mr. Jankowsky—I am going to read a quote from him in a minute—proposed that CBS buy my companies, but he did not want to give me stock. He wanted to buy me out.

In fact, he came down to see me several years ago and told me that, Mr. Paley says that CBS has always been the leader in news, and if there is going to be a 24-hour news network—we had been on about a year—that CBS ought to have it because we have always been the leader. He told me it should be part of CBS, and that you ought to sell it to us. Now just tell me what you want, young man, and we will see if we cannot get together on it.

And I said, well, that is mighty daggon nice. You go tell Mr. Paley one of these days we just might buy CBS. CNN is not for sale.

We will stand on our record as broadcasters. Some of you are cable subscribers and have seen the balanced news coverage and the fine programming for which we have received literally hundreds of awards during the last 7 years.

Before I finish my testimony I will show you what I am running against. Here is a statement of Mr. Jankowsky from Broadcasting Magazine last month. Asked about ABC's ratings slippage, Jankowsky volunteered that he is worried about the third place network and the fact that they had dropped so far. "That's not good for our industry. In fact, I worry about that more than I worry about anything else," explaining that the prices for network advertising could drop on ABC to such a level that maybe the other two networks might be forced—"their prices might be forced down to stay competitive."

His greatest concern—that is the man that runs the television network for Mr. Wyman—is that they might have to reduce prices. Like you said, it is very rare that you just see one of them in here by himself. Usually all three of them are together. At least we have divided. Maybe now we can conquer.

Thank you very much.

The Chairman. Well, Mr. Turner, thank you, for you testimony.

I did not have in mind that the Commerce Committee should get involved in determining whether you or the existing ownership of CBS should operate that particular network. The issue before us is the bill that was introduced by Senator Pressler and others, and the question that he has raised is the degree of review that should be used by the FCC in the case of takeovers.

Do you think that the FCC should, as a matter of course, hold evidentiary hearings on hostile takeovers of networks?

Mr. TURNER. I think that the current rules which do not call for a hearing unless there are reasons to hold one, are perfectly adequate in this case. And of course, even though we filed over 3 months ago, the FCC has not taken it up yet. So it is going to take at least 6 months as far as time is concerned before our application is acted upon.

But the answer is obviously, I think that the current procedures are adequate.

The CHAIRMAN. And would you agree that if it appears to the FCC that the financial health of the acquiring party does not appear to be too sound, that the FCC should not approve the takeover?

Mr. TURNER. Yes, sir.

The CHAIRMAN. You would not feel particularly concerned or particularly threatened by such a requirement?

Mr. TURNER. No, sir. Only CBS has said that our plan is inadequate, but Wall Street and our accountants and our investment bankers think it is perfectly adequate. As an entrepreneur that started with very little and built a company out of nothing, we have always had people say that we were not going to make it, including CBS when we started CNN. So we are used to them saying that, and we expect it.

The CHAIRMAN. Now, during this particular proceeding, you filed a short form application. Do you think that the short form application provides sufficient information to the FCC for the FCC to determine the financial health of your company or anybody that is proposing a takeover?

Mr. TURNER. We withdrew that, I think, within 48 hours feeling that it would not suit our purpose. When CBS announced their buyback plan it included poison pill provisions which are going to make it much more difficult to take over CBS. CBS management is fighting a war on many fronts, and the Pressler bill is just one small front to them. The major arena, of course, is in the financial arena. But we decided not to go forward with a short form application at this point in time, even though that gives them a tremendous time advantage. We are depending on a court case to hold up their bid rather than accelerating our own by the short form application.

There is a lot of risk, as was pointed out by Chairman Fowler, in a short form. That really only gives you interim approval, and in our case it would not at this point be an appropriate plan because it really does not solve anything. You have still got to go through the long form proceeding.

The CHAIRMAN. What is the problem with an evidentiary hearing in the case of a network takeover?

Mr. TURNER. Well, all it would do, in our case, is hold us up by time delay, and time is money, as I am sure you know. It would hold us up even further than we are already being held up by the normal 6-month review process.

And if there are reasons for an evidentiary hearing, they should hold one. In this case we are going to have something that is very unusual. We are having en banc hearings for 2 days on August 1 and 2 to air the issues. That is something I am not familiar with the FCC ever doing in my history. I am sure that if anything comes up, that they will have evidentiary hearings. But our record is one of, we have been in broadcasting for 17 years now and we have a virtually spotless record.

The CHAIRMAN. Mr. Fowler said that delay caused by evidentiary hearings and inundating the applicant with requests for information work to the benefit of the existing management and the existing control of the network and would work against anybody who is challenging it.

Do you agree with that?

Mr. TURNER. Oh, it would be just terrible. What CBS is trying to do is delay final approval of our application. We are running against CBS management the same way you do every 6 years for your Senate seat, and they just do not want the election ever to be held. It is like a South American country.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Thank you.

Let me say first of all that—and this is referring back to some questions that were given to Mr. Wyman, but there have been several questions that have been framed around the fact that S. 1312 provides for an evidentiary hearing when there is a hostile takeover and not a friendly one. However, in drafting this bill, we did not necessarily oppose hearings for nonhostile takeovers. But the various cosponsors felt that it would cover most of the problem areas.

I thought that Senator Rockefeller's questions were very good, and in my opening statement I tried to address the public interest area here because that is really, coming from the part of the country I do, that is really what I am very interested in.

You may argue the merits of Ted Turner versus CBS, and I think they are both good, but let's say that down the road there is a takeover by somebody whom you do not, or you would not consider to be acting in the public interest. Would you not feel that an evidentiary hearing would be a very healthy thing in that case?

Mr. TURNER. Well, if that were the case, Senator, if an undesirable person was trying to take over a network or any broadcast facility, for that matter, the FCC process calls for an evidentiary hearing. If after the normal 6 months process of investigation with everybody getting a chance to file comments and everything—it turned out that somebody looked like they were of questionable character or motive for doing this, the current FCC process would catch them. And even if it did not, you have the courts after that, and then there is always the Congress. I mean, if some member of the American Nazi Party, if there even is one, or the KKK or something, was in here trying to take this thing over, you all could pass a bill tomorrow to stop it, if you thought that the FCC were sympathizers to that group. But this is not the case here.

So it can be attacked in a number of different ways if that circumstance arises, including current procedures.

Senator PRESSLER. Yes. I do not think we would ever have a situation where it would be so extreme. I mean, I think everybody involved in this is of good character and so forth, but in terms of the public interest—well, let me ask you, how do you define the public interest, and how would you run CBS in order to protect that public interest?

What is your definition of the public interest?

Mr. TURNER. Well, I filed a long brief with the Securities Exchange Commission where we said that we would attempt to improve the quality, objectivity and—I cannot remember the other word, I have got so much on my mind. But you know the kind of programs we have done. We did one on South Dakota, Portrait of America.

We underwrite Captain Cousteau's programming. You are intimately familiar because I have seen you many times interviewed on CNN, with the objectivity of our news and our attempt to cover all the issues in the country and cover them in greater depth.

I have, over the years, spoken many times about the excessive violence and sleazy sex and stupidity that makes up the bulk of the network programming. You will never see a program produced by Turner Broadcasting where people are blowing people's brains out. I think it is time we move away from that. That is my personal opinion.

For the other three networks, virtually their only program criteria is how high a program goes in the ratings. They will run virtually anything, and basically admit that they run trash. They know it is trash. And they know it is harmful. And it disturbs them. But they do it anyway.

I would not do that, and do not.

Senator PRESSLER. All right. Well, I would say that you would do very well in an evidentiary hearing.

Mr. TURNER. I think I would. What is this? This is a hearing we are having right now.

Senator PRESSLER. Yes, and I am not in an argument with you, but in your prepared statement you said—and this statement intrigues me—you say "Unlike the oil industry, for example, broadcasting is not research intensive." And, for example, if you are going to spend money on having an apparatus ready to report on tornadoes or blizzards or if you are going to have an apparatus ready to do indepth news reporting on a local level or on a national level—indeed, I think most of the reporting on news, even on the national level, is superficial.

Mr. TURNER. On CNN or on CBS?

Senator PRESSLER. On all stations.

Mr. TURNER. Including CNN?

Senator PRESSLER. In general, yes. I mean, I am not picking on it. Maybe it has to be that way, but the stories pretty much repeat wire stories and so forth, and I am not criticizing here, but of course, maybe it is because I am in the Senate and I see some of these things in a little more depth, but the reporting on the budget is superficial too, for example.

Mr. TURNER. We have run a lot of programming on it. I will send you a schedule so you can catch it, but it does not get very high ratings, but we run it anyway.

You probably have not even seen it.

Senator PRESSLER. No, I do watch a lot of it.

What did you mean by that statement, "unlike the oil industry, for example, broadcasting is not research intensive"?

Mr. **Turner**. Well, you do not have to drill multibillion-dollar holes in the ground or go offshore or arrange for oilspills or things like that. You buy these programs, they are real simple, Hollywood producers make them up, and they put as much sex and violence in them as you ask for. You pick one you like, you buy it and you put it on, and it is already fully sponsored. Virtually all the time on the networks is sold out because of the limited supply of network time versus the unlimited supply of television advertisers. So it does not require R&D.

Senator **Pressler**. All right, but in a takeover I would hope that protecting the public interest would involve considering the strength of the local affiliates. That is what I am talking about when I discuss local tornado warnings, local blizzard warnings, and things which may sound very mundane but are rather expensive.

But I would think that that would be a major part of an evidentiary hearing on a national network.

What would your response to that be?

Mr. **Turner**. Well, I agree with you 100 percent, but local news is a function of the local station's newscasts. From a national standpoint, whenever there is severe weather anywhere in the United States, the networks report on that, too, like hurricanes or tornado watches. We constantly cover things like that on CNN, and I guess CBS does, too, when they are running news programming. But that is a local thing.

Evidentiary hearings would not, as I understand them—and we may be having evidentiary hearings. We are certainly going to have 2 days of hearings on the 1st and 2d of August in front of the FCC on all these matters, but to my knowledge, what local stations and local affiliates do is not something that will come up in evidentiary or en banc hearings because that is the responsibility of the local licensees in the various States.

Senator **Pressler**. But yet on the issue of financial strength, the network's ability to work with affiliates and serve the public interest has to be an issue. And I would agree with you. I mean, the national network does not provide tornado warnings or does not tell me when there is going to be a blizzard or other problem, but it is the local affiliate that does it.

Part of my concern is that if we just consider the national network without considering the impact on local affiliates, we could have a very big problem. I mean some of their matters are research intensive. The local affiliates need the financial support of the network to provide intensive alertness with equipment and weather warnings and so forth on the local level.

Mr. **Turner**. Well, if I am running the network, we will be backing it up just as well or probably better than the current CBS people are.

Senator **Pressler**. Great.

I have a couple more questions I will ask in the next round.

The **Chairman**. Senator Hollings.

Senator **Hollings**. Thank you, Mr. Chairman.

Mr. Turner, I think if I may, following the line of Senator Pressler with respect to financial capability, which is not a purview necessarily of the Commerce Committee, but in any event, this is the one big misgiving or question mark out there.

Assuming, as is now indicated, that you are so financially leveraged in this takeover bid of yours will this forbid financially the continuation of the good programming that you are telling us about and that we all know about on CNN?

In other words, can you really hack it financially? That is the big question, I think.

Mr. TURNER. Well, you know, there is no guarantee ever, because there could be a depression, and I figure one will come back someday, and we certainly have recessions. I have been running the company since I was 24, for 22 years, through about four or five recessions, and we built our company up from virtually nothing. I know how to scramble when the time comes. We operate WTBS and CNN more hours every day than the networks do, and we do it for a fraction of the money. We operate CNN for less than $100 million a year, and we do 48 hours of news a day, and CBS does about 5 or 6 hours a day, and they spend $250 million.

So then saying that we would go out of business, they have said that, but none of the other people have said it. None of the other analysts have said it that looked at our financial plan, and we have not really put any draconian cost cutting of their overhead into our projections. There is a lot of fat in CBS that could be squeezed out if you really needed to do it. They throw money away a lot worse than the defense industry, for instance.

I wish you would investigate them. You would probably find that they are doing some wrong things, too, you know, like some of those defense contractors.

But you all are not giving them the money, the advertisers are.

Senator HOLLINGS. You do not think you would be so financially leveraged that at the end of it all, if you are successful, you will still have the financial strength to continue with quality program?

Mr. TURNER. Absolutely, and if we ever needed additional capital, we could go sell some stock. We did that a year ago. There are all sorts of ways businesses can raise additional funds. You know, you can sell stock or borrow more money or refinance or sell assets. There are plenty of things that you can do. You just have to be flexible.

Like you all are working on the budget right now, we work on ours, make it all work out.

Senator HOLLINGS. Well, now, with respect to maintaining CNN as a news channel, if you are successful with the CBS takeover, you said you would continue both news services. Would that not eliminate some competition there?

Mr. TURNER. Well, ABC, which is being bought by Cap Cities, owns ESPN pretty much outright, which is the No. 1, leading sports network, which also runs sports news, and until last week, ran financial news. There is nothing stopping them from putting in more news. They own Lifetime and Arts and Entertainment, big hunks of them. So one of the three networks already owns three cable networks or big pieces of them.

So I am in competition with one of the networks there at the current time. Both CBS and NBC have tried the cable business and have lost a lot of money and got out of it. It is a much more competitive environment. But we would keep them totally separate from an editorial standpoint.

Senator **Hollings**. Thank you, Mr. Chairman.

The **Chairman**. Senator Rockefeller.

Senator **Rockefeller**. Thank you, Mr. Chairman.

Mr. Turner, two questions.

You and I have talked before, and it has always struck me that you have indicated a very strong concern in a number of areas, Soviet-American relations, nuclear arms control, things of this sort, which is the sort of thing that in a strong person indicates a public commitment and a determination to do something about that.

Now, these hearings at the bottom are still about public interest. They are not just about procedures of the FCC. My question would be, you do not like violence, and you keep it off. And you can do that, and I would assume that would be Ted Turner says to TBS, there will not be X, Y, and Z, and so that does not happen on nonnews, nonpublic affairs programming. And then one can judge that that would be good, or whatever one's views might be.

On the other hand, were Ted Turner to be the owner of CBS Network, and were Ted Turner, a man of strong opinions on world affairs and local events, to exercise the same kind of control or input into news and public affairs programming, I would suppose there would be some who would argue, well, that is good so long as Ted Turner is always being totally balanced and fair and doing exactly what is right.

My question would be, do you tend to exercise news or public affairs intervention or input, shall we say, on TBS, and if you were in control of CBS, would you do so?

Mr. **Turner**. Well, I will tell you, Senator, I am so busy that I do not really have much time to interfere in the day-to-day news operations. I really do not have time.

When I get letters from viewers, as I do occasionally—saying you did not run a balanced story—well, I will call the news people in and ask them about it. Did we run the other side of it? Then I will write the person back and explain it to them, because I am concerned that we have balance; that all sides are heard; that differing viewpoints get across; and that we do not go out and do deliberate hatchet jobs like Sixty Minutes does on all our major institutions in the country.

Somebody has got to be responsible. For a newspaper, the publisher of the paper or the editor is responsible, Somebody is responsible at the local broadcast station, and somebody is responsible at the networks. In the event that, for instance, I was running CBS, and I knew they were going to dig that thing up on General Westmoreland and smear our whole Vietnam effort years afterwards for no reason—I do not know what they gained out of it, what they really accomplished with that whole thing—I might have said, why do we not just let sleeping dogs lie and forget about it, and let's not do it. I might have done that.

But I would not interfere on a day-to-day basis except to make sure that it was honest, fair, and balanced.

Senator **Rockefeller**. Well, how do you interfere to make sure that something is not something?

Mr. Turner. Well, the same way everybody else does. I will tell you what they do now. The main thing is if the ratings are high for a particular news cast, they keep the anchor on no matter what he says, you know, but they fire him if the ratings are not good. The ratings are the determination at the three networks of who is on the news, and what is said and what is not. That is why you see so much violence on the newscasts.

Senator Rockefeller. Let me put it this way. Let's take CBS for a moment, and I do not know the workings of CBS, but I am going to make the assumption that Dan Rather has some editorial control over what appears 30 minutes each evening, and that is a pretty institutional event in this country, as it is on other networks also. But he has, I would judge, the control. If Tom Wyman were to call up Dan Rather 20 minutes before the beginning of the news, the evening news, and say, Dan, I understand you are going to run this; do not do it, my guess would be that Dan would tell Tom Wyman to stick it.

Now, I may be quite wrong about that, but there is a very important principle involved there and one which I tend to be comforted by in the public interest; that is, that the professional news person, in this case Dan Rather and his counterparts, and research staff and those others who work with them, in balance are balanced and not intervened with.

That strikes me as an important principle, particularly where you are not talking about a broad corporate management but an individual person with strong views.

Now, I ask you again, you have indicated the Westmoreland thing should have been played down but that you would not intervene in day-to-day news, and I am somewhat confused as to what the answer therefore is.

Does that meant the nightly news is left untouched by Ted Turner but that public affairs shows or sequences night be influenced by Ted Turner's views?

Mr. Turner. And maybe what time we run the sports news, but basically those are pretty well set at the networks. I do not interfere in the day-to-day operations of our newscasts now, and if I have got CBS on top of it, most of my efforts would be in the entertainment programming area anyway.

But I would say right now that if I felt like the news was biased or was unfair or we were going out to do hatchet jobs on individuals who did not deserve to have hatchet jobs done, I would go in there and change the news management. I would do that because I believe that the news should be fair, balanced, and all sides should be heard from.

All you have to do is look at CNN. CNN is going all over the world now. It is already in Japan, going to Europe in September.

Senator Rockefeller. Mr. Chairman, may I ask one more question?

The Chairman. Of course.

Senator Rockefeller. Excuse me, Mr. Turner, but my time is up and I want to ask one more question.

I agree with you when you deplore violence, and I think all three networks are guilty on that score to the everlasting detriment of a generation or a generation and a half of Americans. I think they have made a substantially negative effect on this country with respect to violence.

Now, you are in a position at TBS where you say we shall not have it, and indeed perhaps you do not. So the absence of creating violence one might say is good. Then one would look at the alternative, and if the alternative is benign, that is, reruns—and I do not know whether you—I do not watch daytime television, and I do not know whether you run I Love Lucy or Leave It to Beaver. I think you do run some westerns—then there is a whole other level of public interest, and that is that—it is not violent, certainly, or it is old time violent if it is western, but what does I Love Lucy contribute to the public interest? What do the reruns contribute?

I think that is just as fair a question to ask as to the American public interest as is violence.

Now, Tom Wyman says you do not have the money to do anything about that.

Mr. TURNER. At WTBS we do not have the money to make new shows every day. Now, the networks have a lot of reruns, too. We still have a lot of original programming, sports programming and the Cousteau programming and other things that we do, but we do not have nearly as high a percentage of it as the networks because we do less than one-tenth as much business as CBS does, so we cannot afford to do a lot of new programming. That is the main reason I want to acquire the network, to do creative, decent programming. It is not to say that we do not run any programming. It is not to say that we do not run any programs that there are people getting shot. We run some of the old John Wayne war movies, and we have run some westerns and things like that.

Senator ROCKEFELLER. But that is my point. I mean, what is in the public interest about that?

Mr. TURNER. That is a good question. Our management of CBS would involve a change in emphasis, though. I think that those of you who have watched WTBS know the difference. The American people know the difference. A lot of them, everywhere I go, say "go get them, Ted." "We really hope you get CBS."

We are known to be more decent, and for the very fact that we come out and make strong positive statements about program quality, which are backed up by our program efforts. We just stand on our record as a broadcaster and on what we have accomplished. But obviously we would not have reruns on CBS. We would have new programs. In fact, we probably would have less reruns than they have at the current time.

I think it is kind of silly to have reruns for half the year. I would want to increase the original programming and maybe cut a little fat out of the overhead to give the American people more original programs and less reruns on the major network which can afford to do it.

Senator ROCKEFELLER. Thank you, Mr. Turner.

Thank you, Mr. Chairman.

The CHAIRMAN. Do you think the FCC, in reviewing this application, should consider what kink of programming would be shown under a new CBS or an old CBS, or is this a matter that the Government should stay out of?

Mr. TURNER. First of all, at the current time the FCC does not review programming. It is not in their charter. It is precluded by first amendment. The networks are allowed to do whatever they want to. Movie companies are allowed to make any violent, sleazy movie that they want to and perpetrate it on unsuspecting children and so forth.

I have called for years, Senator, for years and years, for more responsibility in the media and the people that make these programs, for self-regulation. I do not think the Government should regulate anything that can best be left to the free enterprise system. So I am not calling for federal regulation.

The CHAIRMAN. Well, the free enterprise system is that what makes the buck sells.

Mr. TURNER. Well, I mean, you can make a lot of money selling heroin to high school kids, too, but it is not right. We do have laws against that.

The CHAIRMAN. That is right. I think that is the basic question raised by this legislation, the extent to which the Government should be reviewing what goes on in network television.

Mr. TURNER. Well, basically what this particular piece of special interest legislation does is to further insulate our bid from CBS's shareholders.

The CHAIRMAN. You think it is just a delaying tactic.

Mr. TURNER. Oh, absolutely. There is no question about that.

The CHAIRMAN. I mean, looking at the substance of the bill itself, the substance of the bill provides much more extensive review by the FCC of proposed hostile takeovers, and that to me inevitably gets to the question of programming, whether the question is cast in terms of financial resources or the words of the bill itself, whether the proposed acquisition would serve the public interest.

And my question to you is do you think that the Congress or the FCC or anybody else in Washington should be in the business of reviewing and making decisions on the basis of the kind of programming that would be shown?

Mr. TURNER. As desirable as it might be, I think you all have got so many problems and other things you have to worry about here now, that I do not think that you have got the time to take it up under the current procedures.

But that is why the free enterprise is good—if I get one of those networks, it will be run more in the public interest. I can promise you that.

The CHAIRMAN. Will we have to watch the Braves all the time?

Mr. TURNER. Only on WTBS. Only on WTBS.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Well, in this whole process, somebody has to make decisions, and in our amorphous Federal Government there is a designated group elected, or as in the case of the FCC, appointed to try to wrestle with these issues.

I am not so afraid of hearing managers or licensees or owners saying that the FCC interferes or gets involved with news decisions or programming decisions because, after all, the Commissioners are the ones who are responsible for review. Who is to say that a reporter upon graduating from college suddenly is a reporter, and should not have any review? I have review from my constituents very frequently. I am responsible for my staff if a caseworker does something a certain way, I might interfere and have it done a different way, and my constituents would say we elected you and you are the responsible one. So, I do not think we should be so afraid of an FCC evidentiary review. There has to be somebody designated to review these things, and the things you have said here today I think would stand up very well.

But I do want to get a little bit of the philosophy of the responsibility of the owner. It does not bother me if they are involved, and I can see all these owners and licensees and so forth being so afraid to say they get involved in new decisions, for example, or programming decisions. I think they should because who else is responsible? They just say, well, we hired a bunch of professionals and they can do anything they want; who is reviewing them? Isn't it in the public interest? I think it is very important that the owners face review. There has to be somebody responsible.

Mr. TURNER. Yes, sir.

Senator PRESSLER. Do you have any comment on that, any feeling about it?

Mr. TURNER. Well, I can tell you what is basically happening in the television business is the owner-operated station is becoming a thing of the past. In the major markets there are virtually no stations that are owned by individuals. They are all being bought up by corporations, similar to CBS, large corporations that are run by professional managers, and they are being run strictly for the bottom line. The public interest is something they all talk about, but to somebody that has got 12 stations spread from San Francisco or Chicago or whatever, what they really look at is the bottom line. The top management in New York, where most of these corporations are headquartered, looks at the bottom line. They do not even have a chance to see the so-called public interest program.

And in the smaller towns, CBS would not care about owning a CBS station in Sioux Falls. It would not be worth them piddling with. But in the major markets, that is what is happening, and what we are having is a tremendous concentration going on in the media field. I guess it is going on across the country, and there is very little chance for a small person to be able to compete with this. I mean, Cap Cities-ABC is going to be a much stronger company, and I have to compete with ESPN and the cable networks that they own. I really only have two choices, either grow or perish—you see where the fourth automobile manufacturer is.

Senator PRESSLER. Yes; Well, I think from what you are saying, that you should be supporting my bill because it is true that in my bill they will be asked to look at more than the bottom line.

Mr. TURNER. You built a shield for CBS, Senator.

Senator PRESSLER. No; in my view, everybody does just care about the bottom line frequently, and they just say go run it any way you want, just do not cause any trouble, run the stations any way you want, just show a profit. There has to be somebody designated who can give an evidentiary review or consider the public interest because, as you have just said, presently with these takeovers and media monopolies, all they care about is the bottom line. If the FCC or Congress or somebody who is designated or elected or appointed is not involved on behalf of the public interest, what alternative is there except just having people say take care of the bottom line?

Mr. **Turner**. Well, I would recommend that you write up a whole new bill to review the conglomerates in the broadcasting business. This particular bill just refers to us and CBS for evidentiary hearings. It does not even talk about the ABC-Cap Cities bill or the other concentrations and changes that are going on in the business. This bill, Senator——

Senator **Pressler**. Well, but we have gone through that issue in this hearing. As far as I am concerned, they could have an evidentiary hearing, too. This bill addresses the most potentially dramatic changes in direction, and maybe some of those changes would be good. Maybe another bill should be written, and indeed, if you have amendments to suggest, I would be glad to take them.

But the basic question is, as you have stated the problem, the way these takeovers are occurring and so forth, I do get the feeling in a lot of the media that they just say take care of the bottom line, run it any way you want. We are interested in the bottom line.

Now, who is going to protect the public interest if the FCC doesn't? Maybe you want to offer some amendments to this measure, but if we do not have anybody except the bottom line guys running it, how will we get the public interest protected?

Mr. **Turner**. Well, you are not going to achieve anything by slowing us up even more than we have already been slowed in the regulatory process with this particular bill, sir.

Senator **Pressler**. But you are not answering my question. Now, we might slow you up I do not think any more than 30 days with this, if that much, but let's just assume we did. Still, the questions is who is going to protect the public interest? Who is going to be involved?

Mr. **Turner**. The only person that can protect the public interest from this sort of thing is the government, and you all have decided going way back a long time ago that you wanted freedom of the press and did not want to have the media report to the government.

Senator **Pressler**. But we do not want control. But in terms of an evidentiary review to protect the public interest, would you be opposed to such review?

Mr. **Turner**. No; I would love it if there was a general review of the entire broadcasting business. I would run tomorrow on that, and the Congress and the Senate would vote to give me CBS and take it away from the current people if there was that sort of review process. But it does not exist.

We are here to talk about this particular bill today. This bill is nothing more, nothing more than further delay and a special interest legislation that plays in to CBS's hands.

I am sure you must understand. I have known you for a long time and have the highest respect for you, but this is a pro-CBS, anti-Turner piece of legislation. And God knows that as little as we are, with all the other hurdles that we face in attempting to get to their shareholders, to let them decide whether they want us to run the company or want Wyman to run it, we don't need the delay inherent in this bill.

Senator Pressler. Well, how would you change the legislation to——

Mr. Turner. I would just defeat it, personally.

I would come up with a whole new bill. This legislation is bad legislation.

Senator Pressler. Everything you have said you do not want the bottom line to dominate television decisions. What do you want? You do not want the FCC involved. Who do you want to——

Mr. Turner. Public service, public service. That is what these licenses were given for in the first place.

Senator Pressler. All right, but who is going to decide that? There has to be a standard.

Mr. Turner. It has to be decided by individuals, and in the case of CBS, I would like for it to be decided by the CBS shareholders after the normal review processes are completed. If there is something wrong with our application or our qualifications, it is going to turn up through the regular process. There is nothing stopping the FCC from designating evidentiary hearings when they are through with these 2 days of hearings on August 1 and 2, nothing at all, and if they feel like they should do it, they should do it.

Senator Pressler. This will be my concluding question, but I would think most shareholders are off doing other things, and when they invest—and there should be nothing wrong with this—they invest so as to receive a profit. So, again, you have the bottom line dominating, which you said you did not want to have dominating.

Now, at some point somebody has to be designated to make some judgments in terms of the public interest, and unless it is the elected government or their appointees, I do not know who else it is. That is what I am trying to get to. Who do you want to do that?

Maybe you could do it perfectly yourself, but aside from you, who else?

Mr. Turner. Well, if you want to totally revise the way the media is handled in this country, all you have to do is get together and decide on it. But that is not what this bill does. This bill is a bill that protects CBS. If you want to have the media all report to the government, then by gosh go ahead and do it, but let it apply to everybody, not just to us.

Senator Pressler. Well, I think in the long run this may be a pro-Ted Turner piece of legislation in my judgment. It depends on how it would come out.

Mr. Turner. Well, I sure appreciate that. But I guarantee you, Tom Wyman would not have sat here and spoken in favor of the first piece of government regulation of his business that he has ever asked for. He knows what this legislation is.

Senator Pressler. Well, we could go on for some time, but thank you.

The Chairman. Senator Hollings.

Senator Hollings. No questions.

The Chairman. Senator Ford.

Senator Ford. No questions, Mr. Chairman.

The Chairman. Mr. Turner, thank you very much.

[The statement follows:]

## STATEMENT OF R.E. TURNER III, CHAIRMAN OF THE BOARD AND PRESIDENT, TURNER BROADCASTING SYSTEM, INC.

Good afternoon Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify today on S. 1312, the FCC Network Acquisition Approval Act of 1985. This bill would amend the Communications Act to require a mandatory evidentiary hearing before the Federal Communications Commission to review any hostile acquisition of a broadcast television network.

As you know, TBS has proposed to acquire CBS Inc. (CBS) through an Exchange Offer that has been opposed by CBS management. TBS' Registration Statement describing that Exchange Offer was recently declared effective by the Securities and Exchange Commission, and the prospectus has been mailed to CBS shareholders.

Collateraly, and as required by law, TBS also applied to the Federal Communications Commission (FCC) for consent to transfer the licensed communications facilities of the CBS nework to TBS. Its FCC application was carefully structured so as to fully comply with all current regulatory and statutory procedures. The FCC is currently reviewing those applications.

In that our application is pending at the FCC, and the Securities and Exchange Act limits our discretion to discuss our proposed Exchange Offer. I will confine my testimony this afternoon to a discussion of the provisions of S. 1312 and the overall adequacy of the current FCC transfer of control review procedures.

TBS believes that current FCC procedures are entirely adequate to the disposition of the pending TBS application, and that the mandatory hearing requirement of S. 1312 is entirely unnecessary. Moreover, as I will explain, S. 1312 is inconsisent with elemental requirements of due process and administrative law and improperly insulates network management from the control of the owners of the company.

### CURRENT LEGAL REQUIREMENTS

FCC procedures governing review of broadcast station license transfer applications have been in place for more than two decades. They have not been affected by the recent FCC deregulation of the broadcast industry and have not been questioned until recently.

As you know, the Communications Act and the FCC rules (47 U.S.C. 309 and 47 C.F.R. 73.3540) specify two different license transfer procedures, referred to as "short form" and "long form" procedures, use of which depends on the degree of the change in ownership or control.

In brief, the long form procedure requires the FCC to publish public notice of the proposed license transfer application; provides full opportunity for public comment and the filing of petitions to deny such application: and requires the FCC to conduct an evidentiary hearing if the existence of substantial and material questions of fact have been established in the proceeding.

Under unchallenged case law carefully developed over several decades, a "substantial and material question of fact" is a fact that, if proven in a hearing, would preclude a grant of the application. Allegations of such fact must be specific, material, and supported by affidavit of a person with personal knowledge thereof. Speculative, conclusive, insubstantial or unsupported allegations require no hearing even if an unresolved factual issue is created thereby.

Most important, the procedures are intended to be substantively neutral. Indifferent as to the parties involved, the procedures apply whether or not radio or TV properties are involved, and whether or not single station owners or group owners, including networks, are involved. Proper application of the procedures should neither help nor hinder a particular applicant.

TBS supports, and has fully complied with, the letter and spirit of current transfer procedures. First, TBS has conditioned its proposed Exchange Offer to CBS shareholders upon prior FCC approval of its transfer applications. Second, it intentially filed a form 315, "long form," transfer application at the FCC which allows for full public scrutiny and FCC review.

In the majority of cases, the FCC completes its public interest analysis based on the written comments in the record before it. Occasionally, as in the TBS case. It will schedule an oral argument to assist its analysis. Only rarely has the record justified designation of a full evidentiary hearing, which involves an administrative law judge, pre-trial motions, discovery and the submission of evidence, the cross-examination of witnesses by counsel, and the submission of extensive legal briefs. Such hearings, and the appeals to the full FCC and the courts, can take years to complete. Designation of such a hearing is thus an effective block to any tender offer.

While the FCC should thoroughly review transfers of control, the FCC's review process should not be used to delay those transfers in an attempt to defeat them. Most recent complaints about the FCC's procedures are in reality an effort to convert a neutral process into a tactical weapon to block a particular transaction. The provision of S. 1312 requiring a mandatory evidentiary hearing, irrespective of the factual need for a hearing, is an example of such a pervision of the FCC's neutral processes.

### LEGAL AND PUBLIC INTEREST DEFICIENCIES OF S. 1312

Mr. Chairman, S. 1312 was introduced on June 18, before TBS had filed its response to petitions opposing the TBS application, and thus before the issues for FCC review were joined, and before the FCC had an opportunity to begin its review. The mandatory hearing requirement of S. 1312 was premised on the belief that the petitions to deny filed against TBS at the FCC alone provided, in the words of one of its co-sponsors, "reason enough to hold a full scale hearing." That supposition is conclusory, violates elemental requirements of due process by denying TBS the opportunity to respond to allegations, and entirely ignores standard administrative procedures and prior legal precedent providing for the designation of an evidentiary heaing only when there is proper justification for one.

First, TBS maintains that no material or substantial questions of fact, requiring a hearing, mandatory or otherwise, have been presented to the Commission. Designation of a hearing in these circumstances is tantamount to denying our application and is arbitrary, capricious and illegal. Second, none of the supporters of S. 1312 has shown that current statutory standards are inadquate or that the FCC will abdicate its statutory responsibilities in reviewing the TBS applications.

Additionally, even if the FCC were to abdicate its responsibility, that action can be stopped immediately by a judicial stay and can be reversed by the courts. Remedial legislation is not needed where there is no evidence the Commission has violated the law or ignored its own procedures.

The law currently treats station acquisitions involving also the transfer of control of a network no differently from any other station transfer. No prior approval for the transfer of a network alone is required nor is there a designated "network exception" to the FCC's normal evidentiary standards for determining when a hearing must be held. No such network exception is necessary.

The public interest is fully met through the FCC's power to review and approve transfer of the network owned stations, which are integral to network operation. Moreover, the determination of whether a hearing is necessary should continue to be made on the record and on a case-by-case basis, as the court of appeals acknowledged with approval in the recent storer case.

The few previous network transfer cases provide no precedent for a mandatory hearing requirement. In the paramount/ABC case (1953), for example, the acquiring company was a defendant in 198 pending antitrust actions and previously had been found in violation of the antitrust laws.

In the Hughes/ABC case (1968, the acquiring company had made and closed a tender offer for ABC stock without prior notice to or approval from the FCC in apparent violation of the Communications Act.

In the ITT/ABC case (1967) the FCC designated a hearing, having initially approved the transfer without hearing, only upon the request of the Department of Justice. It subsequently approved the transfer.

In short, the facts upon which hearings were proposed in all of these early cases are simply irrelevant to the TBS proposal.

Additionally, the Commission has reviewed and approved any number of major media mergers in recent years involving companies with significant media holdings—and all without evidentiary hearings. These included group W's purchase of teleprompter; GE's proposed acquisition of Cox Communications; and the merger of Combined Communications with Gannett.

S. 1312 would limit the mandatory hearing requirement to so-called "hostile" takeovers. But, if a mandatory hearing is needed for a hostile takeover, where the public interest issues will be fully developed by antagonistic arguments, isn't the need for a hearing even greater in a friendly merger, where the parties lack any incentive to develop the public interest issues? Does the public interest require any less protection where the management of two companies decide it is in their private interests to merge?

### S. 1312 IS DISCRIMINATORY AND PROTECTS INCUMBENT CBS MANAGEMENT

S. 1312 unfairly and inequitably discriminates against TBS. It does not apply to other pending mergers, such as Capital Cities and ABC, or to Rupert Murdoch's proposed acquisition of Metromedia.

Additionally, comparable acquisitions, made over the past several years, were unimpeded by a mandatory hearing requirement. ABC, for example, acquired an interest in numerous cable television networks under existing law. TBS, a cable network, merely proposes the reverse—the Acquisition of a broadcast network under the same law.

S. 1312 does not cover any of these situations, where a public interest concern may be equal to or greater than the concern posed by the hostile takeover of a network. In short, the bill covers only one type of transaction: A network transaction that incumbent management does not approve. It is like a private bill for incumbent management.

Through the mandatory hearing requirement, S. 1312 would insulate CBS' current management from the control of the CBS shareholders who own the company. This is inconsistent with the basic principles of democracy that characterize our corporate institutions as much as our political institutions.

As you know, Mr. Chairman, corporate governance has been based on principles of shareholder control and shareholder democracy. In recent years, however, professional managers with little or no equity interest have, for reasons of self-interest, sought to usurp these basic rights of ownership.

Presented in Exhibit A of my testimony is a chronological list of the acts that CBS' management has taken in the last few months to frustrate shareholder democracy. I would hope you would not add to this list by enacting S. 1312.

Frankly, it is surprising to me that any member of Congress would support legislation entrenching current CBS management against the interests of its shareholders and indeed the public. Their performance record as public servants and as entrepreneurs leaves a lot to be desired.

In programming, CBS continually has ignored repeated public requests to expand and improve its service for children, minorities and senior citizens, as cavalierly as it ignored the recent request of the Democratic Congressional Leadership for a same day reply opportunity to President Reagan's speech on tax reform. CBS has helped to create and perpetuate television as the "vast wasteland" Newton Minow identified twenty years ago.

In its FCC pleadings, and prior to its recent self-tender offer. CBS boasted at length about the business abilities of its officers and directors, claiming that there is "little opportunity to bring about improvements. . ." in CBS. The fact remains, however, that CBS's management has been roundly criticized over the years for expanding into non-broadcast ventures that the company later was forced to discontinue or to dispose of at a substantial loss.

CBS's highly-publicized addition to the cable network field—CBS Cable—cost the company $30 million in losses in 1982 alone, and the combined three-year losses from its CBS Cable, videodisk, and direct broadcast satellite enterprises were a staggering $100 million. In 1984, CBS stunned the financial community by paying $362 million in cash for Ziff-Davis' twelve specialty magazines—over 20 times those magazine's aftertax earnings—and CBS is now suing Ziff-Davis over the sale. CBS previously tried and failed at baseball, in which its ownership of the New York Yankees was a disaster on and off the playing field; at paperback books, for which it withdrew in 1980 at a cost to the company of $26.5 million; at electronics manufacturing, from which it sold out for a loss of $4.8 million (1961 dollars); at musical instruments, which it decided to abandon in 1984 following constant losses; and at theatrical film production, which it entered without notable success in the 1970's and 1980's. These problems have been compounded by a steady turnover in top management that saw the forced resignations of Messrs. Stanton, Schneider, Taylor, and Backe, all heirs apparent to the throne of William Paley.

Why should not the stewardship of CBS management be subject to critical scrutiny and the continuing approval of its shareholders? A member of Congress must be elected periodically by the public, why should CBS management be immunized from such review. Yet this is precisely what S. 1312 would accomplish.

### FINANCIAL QUALIFICATION ISSUE

Finally, I would like to address the proper scope of the financial qualification issue in the FCC's review process. I recognize, for example, that there is concern in Congress, that corporate acquisitions financed by high yield bonds may impose unacceptable costs on the companies involved and on the economy in general. Without debating the merits of such financing, I would like to point out three significant factors that distinguish the use of such securities in broadcasting from other industries.

First is the regulatory delay factor. The FCC's examination of the TBS proposal, for example, probably will take a minimum of six months. The inherent delay in, and uncertainty of, regulatory approval procedures act as a disincentive to a cash deal, given the actual and opportunity costs of capital.

Second, to a significant extent, the broadcasting business is counter-cyclical. That is, advertising may increase their advertising budgets in order to maintain sales in a recession. Broadcast networks can thus service debt at a significantly higher level than can industrial or other service sector companies.

Finally, and unlike the oil industry for example, broadcasting is not research intensive. To the extent that there are investments in the future, these are investments in future programming material, not capital or R & D investments.

There are those, nevertheless, who argue that the FCC should conduct a detailed analysis of the methods used to finance transfers of control, particularly hostile transfers. Under the Communications Act, however, the Commission is *not* made the guarantor of future profits of broadcast licenses. It is authorized by statute to require an applicant to set forth such facts as the Commission may require as to the applicant's financial qualifications to operate a broadcast station.

Commission regulations in this area require that an applicant have sufficient financial assets to consummate the transfer and operate the facilities for 90 days. The commission adopted this financial qualification standard because it concluded that open-ended and detailed examination of applicants' financial attributes were necessarily speculative and costly and could not reliably predict, or protect the public from, subsequent failures or service degradation, which was the purported objective of the examination.

Rather, the Commission recognized that "market forces, competition, the general state of the economy or the quality of the station management" determine the financial viability of broadcast station operations. It properly concluded that its previous, one-year, financial qualification standard was unwarranted because it also imposed severe entry barrier costs, inhibited media diversity. And delayed legitimate transactions.

There has been no showing that the 90-day financial qualification rule has led to widespread station failures or reduced service to the public. In fact, as the National Black Media Coalition has recently observed, the reinstitution of the previous, stringent financial standard would reduce diversity by chilling station acquisition efforts of minorities, who often must rely on highly-leveraged financial packages to enter the broadcasting industry.

In any event, and as clearly demonstrated in TBS' filings before the FCC, there is no question at all that TBS is financially qualified to operate the CBS network if successful in its proposed exchange offer. The pro formas submitted by TBS show clearly that TBS can not only maintain current CBS program development and acquisition investments, but that they can be increased under TBS stewardship. Moreover, these pro formas cover nine years, not just the three months required by the FCC. All of this information, as well as CBS' response, is before the FCC. Moreover, the FCC will explore the financial issue in its scheduled *en banc* hearing on our application. I am confident that the FCC will find TBS to be financially qualified.

In conclusion, Mr. Chairman, S. 1312 is simply a bad bill. It is special interest legislation of the worst sort. It would deny CBS shareholders the right to consider the disposition of their own property in the marketplace. It would give a Congressional endorsement to current CBS management—an act of significant first amendment concern. It would change the license transfer rules in the midst of the game for pending applications in violation of elemental principles of due process.

Thank you again for inviting me to appear this morning. I would be happy to answer questions you may have.

### EXHIBIT A—CHRONOLOGICAL LIST OF CBS ACTS IN OPPOSITION TO TBS' PROPOSED EXCHANGE OFFER

I. CBS's response to TBS Exchange Offer: Management entrenchment: actions designed solely to prevent TBS' Exchange Offer from reaching CBS' shareholders.

A. March 29, 1985: Incumbent CBS management caused CBS to enter into two revolving credit agreements containing "poison pill" features.

B. April 4, 1985: Without notice and without shareholder approval, the CBS board of directors amended the CBS By-Laws to eliminate the right of shareholders to call a special meeting of shareholders and authorized issuance of additional securities containing "poison pill" provisions.

C. April 22, 1985: CBS management filed unmeritorious claims in federal court against Turner Broadcasting and me.

D. Since April of this year, CBS management has engaged in a public and private campaign to disparage and discourage bids for CBS, for example, by suing its own shareholders and by attempting to dissuade investment bankers and others from providing services to Turner Broadcasting.

E. Since April of this year, CBS management has lobbied extensively to persuade the New York State legislature to enact amendments to state law (that raise serious constitutional issues) which would give the incumbent CBS Board of Directors virtual veto power over the TBS Exchange Offer.

F. After TBS filed its initial registration statement, CBS management intervened in the review processes of the Securities and Exchange Commission and the Antitrust Division of the Department of Justice, seeking to delay the TBS offer.

G. In April, May and June of this year, CBS management made prolonged, but unsuccessful, attempts to dissuade the American Stock Exchange from approving Turner Broadcasting Securities for listing on the Exchange.

H. CBS management caused its "independent" accounting firm, Coopers & Lybrand, to prepare and send to third parties, including the SEC, an unprecedented letter, which, among other things, wrongfully accused TBS' accountants of certifying false and misleading financial statements.

I. On June 3, 1985, CBS management filed, and encouraged numerous others to file, with the Federal Communications Commission nonmeritorious petitions seeking denial of the TBS applications for operating and ownership control of CBS.

J. CBS has also entered into employment contracts with, and provided stock appreciation rights, to, its Chairman, Thomas A. Wyman, which will require the payment of substantial benefits if he voluntarily terminates his employment upon a change of control.

K. CBS management has agreed to pay its investment banker, Morgan Stanley & Co., more than $10 million in connection with management's efforts to thwart the TBS offer, a portion of which fee is contingent upon the TBS offer being unsuccessful.

II. Culmination of Entrenchment Efforts: July 3, 1985 Offer to Purchase 6½ million of its shares for $40 cash and $110 in notes.

A. CBS issues a partial offer for only a little more than one-fifth of its outstanding shares (compared to TBS's offer for all (100%) of the outstanding shares of CBS.)

B. CBS management unilaterally inserts "poison pill" provisions both in the proposed private placement of preferred stock and in the issuance of notes to public shareholders—which CBS admitted "would make more difficult, and may prevent, consummation of the TBS Offer and might deter certain other persons from attempting . . . to gain control of the Company . . ."

C. CBS' offer includes a "sweetheart deal" for Founder Chairman, William S. Paley, who gets an option to sell a pro rata portion of his shares to CBS:

1. For a period of 7 years (from 1988 through 1995) instead of one-time, four-week chance for public shareholders.

2. For $150 cash, compared with only $40 cash and $110 in 10-year notes available to public shareholders.

D. CBS' offer includes a unilaterally imposed change in CBS' capital structure—which CBS admitted "might diminish the attractiveness of the Company to certain persons interested in acquiring control of the Company"

E. CBS' offer illustrates the fallacy of CBS management's prior arguments to the FCC and in the press.

1. CBS had argued that sales of its non-broadcast assets would not be prudent. Now, CBS plans "to sell assets sufficient to generate approximately $300 million in after-tax proceeds".

2. CBS had argued that meaningful cost-savings would be impracticable. Now, CBS states that it "intends to begin a program to reduce corporate and divisional overhead expenses with the goal of achieving a reduction of at least $20 million per annum from previously projected amounts by the end of 1987".

3. CBS had argued that TBS's projection of 8% annual growth in operating profits for CBS television broadcast and network business was unrealistic. Now, CBS projects net income per share to increase by approximately 25% in 1986 over 1985, and by approximately 20% in 1987 over 1986.

Next we have a panel. Mr. Henry Geller, Washington Center for Public Policy, and Prof. Glen Robinson, University of Virginia School of Law.

[Pause.]

Senator FORD. Mr. Chairman, it appears that the hearing may be over.

The CHAIRMAN. Gentlemen, thank you very much for your patience and for waiting so long to testify. We appreciate your being here.

Mr. Geller, would you like to proceed?

## STATEMENTS OF HENRY GELLER, WASHINGTON CENTER FOR PUBLIC POLICY; AND GLEN O. ROBINSON, PROFESSOR, UNIVERSITY OF VIRGINIA SCHOOL OF LAW

Mr. GELLER. Thank you, Mr. Chairman.

As to the bill, I believe that it both does too much and too little. The too much I believe is, as you heard already today, that it requires an evidentiary hearing in every case of a hostile network takeover: I agree with what some prior witnesses have said, that you need an evidentiary hearing only if there is a substantial issue of fact, and if there is not such an issue it serves no useful purpose.

I certainly agree that in the case of a network there is such great importance to the American people that there ought to be a hard look at any change in control. I would extend that both to friendly or hostile network takeover. If you look to the past, in the case of the ABC-ITT one, that was a friendly takeover. Yet it raised very serious issues. It split the Commission 4 to 3 and troubled the court a great deal.

So I would revise the bill at the most to require this hard look and then a report to Congress.

I believe that the bill does too little in other respects, and those respects deal with the present statutory scheme. I believe the Commission is subverting that scheme today. Chairman Fowler described it to you earlier. It is a pre-grant process, where the application is filed, notice is given, there is an opportunity to petition to deny, the public can come in.

And this is to be followed in all cases except those of a minor nature—that is what you said: that a transfer not involving a substantial change in ownership or control is, one of a minor nature.

The Commission under Chairman Fowler is ignoring that scheme. The latest example of that involves this trustee that you heard about where under section 309(f) a temporary authorization, an STA, is given, in an essentially two-step process.

Now, I would just like to turn to that trustee scheme and follow it through in the case of CBS-Turner. I think it is fair to do that because it is not before you. It is just a hypothetical. Turner has withdrawn it and I am not talking about any pending matter.

The Commission would give the Turner trustee the right to acquire a majority of stock, 67 percent, and then would continue the long form hearing to determine whether Turner should be given a regular authorization to own CBS. In terms of S. 1312, the FCC would continue the evidentiary hearing.

Now, the Commission would be doing this in order to promote corporate democracy, so that the CBS offer, the buy back, would be before the stockholders and so also would be the Turner offer. And the chairman says that the market knows all about the Turner offer and that it is based on paper. They can evaluate that, and he seems to indicate that it may not succeed.

But suppose it does. That means that, pursuant to FCC authorization—and I emphasize that—pursuant to the Commission saying it is all right to do this, hundreds of thousands of stockholders would have traded their stock, millions of dollars of stock, for paper.

That paper is really backed up by one thing and one thing alone, CBS assets. And if Turner is not given control, all those stockholders are out on a limb. They really are in terrible shape. And if you believe, Mr. Chairman, that the FCC will not take that fact into account when it considers public interest objections, I can only say that there is some swamp land in Florida that I would like to talk to you about.

Because seriously, the fact is that, human nature being what it is, the Commission will be influenced by what has occurred. It cannot help but be influenced. The courts have said that legal theory is one thing, but the practicalities are another, and they have stopped this way of proceeding.

So I believe Senator Kasten is essentially right in his questioning of this trustee process and that the Commission should adhere to the 1960 pre-grant process. What they ought to do is to try to streamline that process so as to promote corporate democracy, to have the authority to cut down on the filing times when there is a need for expedition, to have the authority to require that a challenger file at least 90 days before the critical stockholder or other occurrence.

And then I think what the Commission should do is, within 45 days of that filing, it ought to resolve whether or not it wants to make a grant or condition a grant or whether there are issues of fact and it wants to hold a hearing. If it decides it wants to hold a hearing, it should conclude that hearing within another 30 days.

It can sit en banc, and do that. That is its job. It is an extraordinary application; it requires extraordinary procedures. The FCC sat en banc 13 days in the ABC–ITT case. They ought to do so here.

So I do not think the Commission is proceeding soundly in this CBS matter. All the pleadings are in. The Commission ought to reach a decision. If the decision is to grant, fine. If it is to condition, fine. If it is a hearing, they ought to go to an en banc hearing. But they ought not to be going away on vacation now. They have to give up Maine. They ought to sit en banc and resolve this matter.

I think that is what is really called for here, and that is why there ought to be remedial legislation by you, the Congrees. The Act is being subverted. The Commission now is weighting its own convenience and also not inconveniencing challengers, but it is not considering the pre-grant process and the right of the public to effective participation in this process.

Thank you.

[The statement follows:]

## STATEMENT OF HENRY GELLER

First, I commend the sponsors of S. 1312 for their focus on a most important issue. Despite all the ferment in communications, television remains by far the most important mass meduium, and network television continues to be the most important component of this medium. In my view, that will remain the case for the rest of the century. It follows that the ownership of the three major networks greatly affects the public interest. And finally, as I hope to show within, recent FCC actions raise considerable concern as to whether that agency is following proper process in this critical area.

However, I believe that S. 1312 is flawed in that it both does too much and too little. As to the too much, after commendably pointing up criteria upon which the FCC should focus, it requires a full evidentiary hearing in every case of a hostile network takeover attempt. But there is only one sound reasons for an evidentiary hearing—the need to resolve substantial and material issues of fact. If no such factual issues are presented, surely an oral argument is the most that is called for.

I can appreciate why this requirement of a full evidentiary hearing is set forth. Hostile attempts to acquire the critically important networks are rare, so the requirement will not impose an undue burden, and, equally important, this Commission is so marketplace oriented that there is the concern that without such a requirement, public interest considerations will be sloughed aside. However, it seems to me that legislation should not be based upon the inadequacies of a particular Commission, and further, that the requirement will not accomplish its goal. The agency can be forced to a hearing but not to truly effective consideration of public interest criteria.

To give but one example, if a majority of the Commission is indifferent to the importance of diversification of control of mass media on a national or regional basis, a hearing will not change that bent: It will simply require the Commission to "turn the crank".

Further, I question whether there should be a distinction between hostile and friendly takeovers of networks. The ABC-ITT takeover was friendly but raised difficult and complex issues of fact, requiring roughly two weeks of en banc Commission hearings; it left a closely divided agency (4-3) and plainly troubled the court upon review. A hostile takeover, on the other hand, might not raise such difficult issues. Cap Cities would not, of course, attempt an unfriendly acquisition of ABC, but suppose, for the sake of argument, that it did. It would be the same Cap Cities, an extraordinarily well managed and experienced broadcaster with a splendid past record of public service. Depending on other facets not discussed here, it is possible that a hostile Cap Cities takeover of ABC would raise far less questions than the friendly ABC-ITT one.

What is called for is thus a hard look (to use the Court's expression in the *Greater Boston* case, 444 F.2d at 851) in every instance of a network change of ownership or control. As a result of that hard look, there may well be a need for an evidentiary hearing, while in others no such process is required. I would therefore use the criteria in Section 333(b)(1) but require only a "hard look" as to the need for a hearing under Section 309(e) and a detailed report to the Congress as to the disposition of any such network acquisition application. This would create an important "mood" or sense of Congress without rigid process rules that might not fit particular situations.

I believe that the bill does too little because it does not take account of the Commission's recent actions in this field. In my view, those actions show a subversion of the Congressional intent that must be dealt with, if the bill is to accomplish its salutory purpose.

First, it is important to focus on the Congressional scheme in this area. It is, I submit, a clear one:

(i) Before transferring control of a corporation holding radio licenses, there must be application to the Commission and a finding by the agency that the public interest would be served by a grant of the application (Section 310(d)).

(ii) Before the assignment or transfer application can be granted, the Commission must issue a public notice followed by a 30-day waiting period in which any party in interest may file a petition to deny (Sections 309(b)(d)).

(iii) Transfer applications not involving a "substantial change" in control are excepted from the above procedures in (ii). They can therefore be filed on FCC Form 316 (the so-called short form) instead of Form 315, the long form required for applications coming within (ii).

As shown by its recent actions, the FCC has used the exception for applications not involving substantial changes in control to avoid the notice/petition to deny process, in order to promote its notion of corporate democracy. And the courts so far have affirmed the Commission's discretion to act in this fashion. See *Storer Communications, Inc.* v. *FCC*, Case No. 85-1246, decided May 2, 1985 (I should note here that I represented losing public interest participants in that case).

You may say that the court affirmance ends the matter. I urge, however, that you—the Congress—are the ultimate forum—the one that most counts on policy matters such as this, and that it is most important for you to review this particular area. For when Congress adopted the pre-grant process in 1960, it gave explicit guidance that it was to be followed except for a very few cases of minor concern"—such as involuntary transfers to the estate upon death or two partners setting up a corporation on the same 50-50% basis. H. Rept. No. 1800, on Communications Act Amendments, 1960, 86th Cong., 2d Sess., 1960, at 11; H. Comm. Print at 132-33, 86th Cong., 2d Sess., April 13, 1960.

The Commission has deliberately ignored that guidance. Althought it was storngly urged as controlling in the *Storer* case, the Commission's opinion completely ignores it. At the hearing last Thursday before the House Subcommittee, Chairman Dingell asked Chairman Fowler how the proposed change in control in *Storer*—a new Board taking over with the announced intent to dismantle the company—could be said to be "of a minor nature." Chairman Fowler replied that that phrase is not in the stature but rather in the legislative report. What he is saying to you is thus quite stark: The FCC can ignore clear legislative guidance unless it is in the statute itself.

The Commission also set forth its guiding policy here. It was urged in *Storer* that if the Commission required applications to be filed sufficiently far in advance of critical stockholders meeting, the full process of Section 309 could be observed. The Commission rejected this, because the "substantial delays which necessarily attend long-Form application procedures could inhibit or deter proxy contents and provide an undue degree of insulation to incumbent licensee Board members" (*Storer*, at n.9). Think what the Commission is there telling you: "If we allow time for petitions to deny, interested members of the public might come forward with public interest issues, and that would result in delay and work against corporate democracy." In any choice between effective public participation and possibly inhibiting corporate democracy, the Commission eliminates the public as a nuisance. Is that what you intended in 1960 when Section 309 was enacted, or was it that the public must be afforded the opportunity to participate except in the most minor or inconsequential instances?

You may ask—but why is this relevant to S. 1312? It is most relevant, because unless you come to grips with the above Commission policy and attitude, you will find that legislation like S. 1312 will be undermined and the legislative intent frustrated. Ans this can be shown by examining the Commission's latest ploy: Granting the application of a designated trustee to acquire a controlling stock interest in a multiple station owner, while it is continuing to process the long-form application for the trustee's beneficiary. If you apply that ploy to S. 1312, the FCC would hold the required evidentiary hearing, but in the meantime it would have granted the application of the hostile takeover group for a trustee to acquire the controlling (over 50%) stock ownership.

I believe that this two-step trustee ploy is most flawed, and that it undermines the basic premise of Section 309—a full and effective pre-grant examination of public interest issues (just as it would undermine the efficiacy of the full evidentiary hearing required by S. 1312). The Commission will answer that if the on-going long-form process (or evidentiary hearing of S. 1312) should end unfavorably to the applicant and thus call for divestiture action as to the trustee's stock holdings, it can and will act to effect such divestiture. I don't believe it, and I urge that you shouldn't either.

As an initial matter, it is necessary to examine very carefully the particular trust permitted by the agency. If it allows the trustee to influence the company's policies, or is anti-competitive in that it constitutes the camel's nose in the tent for inside informational and other purposes, or it gives the trustee access to the assets in the event of a required divestiture (and this pre-judges one of the issues contested), it can raise the most serious questions of propriety. But let's assume that it is nothing but a holding device.

If the challenger has been successful, hundreds of millions of dollars in stock transactions will have occurred, with the Commission's blessing. Further, in some instances, the stock transfers to the trustee authorized by the Commission may have occurred on the basis of "junk bonds" really dependent on the broadcast assets, so that if there is not final approval, these transactions are in great jeopardy. The company itself will be in limbo: A new group has really gotten control and the old group of directors and officers, while theoretically still ensconced, are understandably adrift (and cold indeed depart). In these circumstances, there is great pressure on the Commission to go along with the practicalities of the situation—to let the new group take over and get on with the business of the corporation. The chances of the long-form application being granted issues may have been raised. And there is thus a subversion of the policy of full effective pre-grant consideration of public interest issues, after notice and opportunity for interested persons to participate.

What the Commission said in the 1973 *Teleprompter* case (40 FCC2d 1027,1031) is applicable here: "Transferring control of a radio license without followng the procedures that require proper consent . . . permits the insinuation of disqualified persons into the communications apparatus, and, when we are faced with an application after the fact, defuses our ability to say 'no'." There are court statements to the same effect in analogous situations. See *Community Broadcasting, Inc.* v. *FCC*, 274 F.2d 753, 758–59 (D.C. Cir. 1960), where the court, in reversing the FCC's grant of temporary operating authority to one of several applicants for the channel, pointed out that there would be substantial interim expenditures made really in reliance on getting the regular authorization, and therefore "the grant of temporary authority . . . is pregnant with danger" to the Commission's objective judgement in the ongoing regular proceeding. This holding, the court stressed, reflects "ordinary human experience," and "is not a challenge to the good faith or integrity of the [Commission]; it is a recognition that they are mortal men." Ibid. To put it succinctly, "legal theory is one thing [b]ut the practicalities are different." *Ashbacker Radio Corp* v. *FCC, 326 U.S. 327, 332 (1945).*

This trustee ploy again points up the FCC's underlying policy. In *Storer*, at pars. 27–28, the Commission stressed that no stock was changing hands and that control lay with the shareholders who, in voting at their annual meeting, would only be exercising their "substantial control," not transferring that control. In the trustee situation, it apparently does not matter how much stock is changing hands, nor is the substantial control of the shareholders important; what matters now is that the board of directors is not taken over.

Further, the Commission, apparently embarrassed to call the trustee application "of minor nature," now seems to be looking to a section never cited by anyone—309(f) giving the Commission authority to grant temporary authorizations (STAs) ". . . if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest. . . ." See Broadcasting magazine, July 15, 1985, at 29. But in these transfer situations, there are no such "extraordinary curcumstances," and certainly no need for temporary operations such as a hurricane making necessary new temporary operational facilities. Rather, "serious prejudice to the public interest" would flow from the temporary grant itself because it is made simply to get around the pre-grant requirements of Section 309. It results in the completly anomalous and indeed inexplicable result of two different entities holding the authorization at the same time for the same frequencies! This is a shell game, but the result is the same: corporate democracy must be promoted, but not the public's right to participate or effective (pre-grant) consideration of public interest issues.

But it is not a matter of examining every apparent new FCC ploy or Commission precedent or those of the ICC or the CAB. Rather, what is critical today is your judgment. Is this manner of proceeding what you, the Congress, intended in 1960 when you specified the pre-grant process of notice and opportunity to file petitions to deny in all but instances of minor concern? If it is, so be it. But if it is not, I respectfully suggest to you that the time for remedial action is now. The Commission has clearly indicated its own course, and with all the pending matters, it would serve no useful purpose to await FCC action, scheduled for late this year, in its outstanding notice on the process to be followed.

I agree that corporate democracy should be promoted—that it is not desirable to insulate management from challenge because of FCC licenses. But the promotion of corporate democracy must not be at the expense of the 1960 pre-grant process—of the right of the public to participate fully and effectively. I suggest an approach along the following lines:

(i) If there is a critical stockholders meeting or some other similar event, the applicant must file at least 90 days prior to that event.

(ii) The applicant should inform the Commission of the need for expedition and request shorter notice and filing times than those now specified in Section 309. The Commission would have the authority to shorten the time requirements (e.g., 12 days for petitions to deny; 12 for responses and six days for replies thereto).

(iii) If the Commission finds that there are not substantial and material issues of fact, it shall decide the matter within 45 days after the notice of the filing of the application. If there are such issues, the Commission shall so determine within 45 days and then sit en banc, as it did for 13 days (and nights) in *ABC-ITT*, and decide the matter within 75 days of notice. This leaves roughly two weeks for expedited court consideration of any stay requests (or as in the *Storer* case, of the merits).

The foregoing does not give the challenger everything that would be desirable from his viewpoint. Thus, the challenger might like to wait until 45 days before the critical meeting, so as to cut down on the incumbent's maneuvering time. Or there could be developments within this shortened time period (either the 45 day or the 75 day period) to which the challenger might like to respond in the market. In such instances the challenger would have to rely upon securities law (Federal or State) or the knowledge of the stockholders that an FCC decision will be shortly forthcoming. In any event, I believe that this is the best that can be done for corporate democracy, consistent with the overriding need to protect the public interest.

And the latter does control here. For the transfer here is not one of a company making electric toasters; it is of a business impressed with the public interest. It follows that corporate democracy, however desirable, is not the all-important goal; the protection or promotion of the public interest standard of the Act is the goal. See *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969); *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) (the Act "is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication . . ." but rather is designed to insure operation in the public interest). That in turn calls for full and effective public participation and Commission resolution of all public interest issues. Contrary to the Commission's extraordinary view, public participation is not to be deplored; Congress has made it clear that this is a welcome development. And if this process raises issues that must be explored and resolved, that again is desirable.

In sum, I suggest the following:

(i) Revise Section 309(d) to substitute the phrase "of minor concern" for "substantial" and use examples such as transfer to an estate upon death or pro forma transfers (partners to 50-50% corporation). This revision clearly should not be necessary, but the Commission is now ignoring this explicit statutory guidance, and the courts have not provided any check in this respect. For the purposes of legislation like S.1312, it is especially necessary to make clear that there is no way around 309(b) through the trustee route (and STAs under 309(f)).

(ii) Adopt the revisions suggested above to accommodate corporate democracy (i.e., expedited treatment of such applications, with specified 45 or 75 days time periods for decision).

(iii) Require a hard look at all network transfers of control, with a detailed report to the Congress, so as to provide a new mood, insuring heightened focus in these most important mass media transfers.

Again, thank you for the opportunity to present these views for your consideration. I should be glad to answer any questions that you may have concerning them.

The CHAIRMAN. Professor Robinson.

Mr. ROBINSON. Thank you, Mr. Chairman.

The hour is late. In the interest of brevity, I will summarize three main points of my testimony.

Point one. I think S. 1312 is fundamentally flawed in its premise that broadcast network takeovers call for special scrutiny, scrutiny not even accorded to other broadcast media. The bill is presumably based on the idea that networks are so singularly important to the structure of broadcast that they necessarily implicate public interest issues whenever there is a change in corporate structure.

However, even if one accepts that networks are critically important to the present structure of broadcasting, it does not follow that a change in corporate control or corporate management is necessarily a matter of regulatory concern. Particularly this is true where, as in the case with which everyone is concerned, the dominant controversy is directed at matters of the financial terms.

To put the issue concretely, let us consider the CBS-Turner situation, which is obviously the motive force behind this bill. The principal argument is directed at the financial terms which Turner has proposed and which CBS declares to be unacceptable. It seems to me that, insofar as CBS arguments are directed to the FCC or to Congress by this bill, they are misdirected. More properly, they ought to be addressed to CBS shareholders or perhaps the Securities and Exchange Commission.

There is no reason to suppose that the FCC is better able to evaluate the terms of the Turner proposal, and its probable effect on the financial future of CBS, than Wall Street. The best test of whether or not the Turner offer is financially acceptable is whether or not it is in fact accepted. It is that simple. If the offer is as incredibly bad as CBS has tried to make it out to be, it is just equally incredible to think that it would be accepted by the shareholders and their sophisticated financial advisors and bankers.

Point two. It will be argued, of course, that whether or not the FCC has the expertise, it does have the regulatory responsibility and it cannot delegate that responsibility to the market, to Wall Street. To begin with, that argument is inapt in the context of the present bill, because the bill's application is limited to hostile takeovers, those not approved by the network's board of directors. If the public interest in corporate structure cannot be delegated to the market, it cannot be delegated to the network's board of directors either. If a transfer of control raises issues of public interest to demand an evidentiary hearing, how can one possibly justify the distinction drawn in this bill between friendly and unfriendly takeovers? Several members of the committee and other witnesses have drawn attention to this incongruity. I have still not heard a convincing explanation for it.

The apparent notion underlying this distinction is that we trust the present network management and we distrust any challengers of whom they do not approve. There is no basis for that trust. With all due respect to CBS and its present management, when the current head of CBS was made chief executive in 1980 I do not recall anyone suggesting the FCC should pass on his qualifications to run CBS, even though, I might note parenthetically, he was a total stranger to the broadcast industry.

Now, I am not here to try to sell the respective merits of Ted Turner over Thomas Wyman. That is not the point. The point is that all this talk about transfer of control ignores the reality of the way in which networks are run, have been run, and will continue to be run.

One hears a lot about the need to maintain corporate stability, which is said to be threatened by hostile takeovers. I am not quite sure what is intended by the term stability in this context. It cannot possibly mean managerial continuity. Since Frank Stanton's retirement in 1973, the chief executive and top level officers at CBS have been changed three times. Though the abruptness of these changes was widely noted in Wall Street, I do not recall it ever having been a subject of regulatory concern, nor should it have been. There is no indication that those changes in managerial control, as abrupt as they were, had any important public interest implications.

The same could be said of changes in share ownership. I will not hazard a guess how many times the majority of the shareholders of

CBS have changed in recent years. I note only the obvious fact that a majority of the shares are held by institutional investors, for example pension funds; and I am confident that the FCC has not the slightest idea who votes those shares. Nor should it. It is a reality that the shareholders basically do not control a broadly held, publicly held corporation like CBS. If we are going to get into the question of who runs what, then we cannot have a bill which implicitly assumes that the incumbent managers are the ones publicly elected or approved and the challengers must stay out unless the incumbents let them in.

I do not quarrel with the idea that the FCC should consider aspects of the public interest if there are credible concerns raised. I do assert that the financial argument in this case is almost certainly a red herring. I cannot imagine a scenario—even the one painted by CBS—which would have bothersome implications for the public interest.

We are asked to imagine that in the case of a hostile takeover by CBS it might go into a death spiral ending in financial ruin. I think it is incredible to suppose that will happen. But let us for the moment imagine that it could. So what? Will the networking function disappear? We have heard what a profitable enterprise that is. It is incredible to suppose that the networking function will suddenly cease to exist. Will the stations go dark? I find that even more incredible. These are the most profitable stations in the country. If they are not run by CBS—if they are not part of the present corporate structure of CBS—they will be part of somebody else's corporate structure. There is no compelling public interest in retaining the same managers forever.

My last point briefly is this: Much of the concern, I think, over the CBS takeover proposal and other takeovers in the industry is driven by a comfortable familiarity with the status quo and a discomforting anxiety that attends any change, particularly in a regulatory environment where the change is being driven by the law of the marketplace as opposed to the laws of regulatory agencies.

Even where there is no clearly defined public interest reason to resist the change, the time-honored response is to call for a full hearing. After all, what can it matter? How can it harm? We ought to get the facts.

The appeal of this call is hard to resist, I admit. One can always point to more uncertainties, the need for more information, the symbolic satisfaction of having turned over every stone to make sure no danger lurks in dark places. The fact is, the reality is, that argument in the present context is quite disingenuous.

Although there may be unknown factors in a particular case, in the present case the knowable facts are known. The purpose of seeking a hearing in this case, as in most others like it, is essentially to delay the takeover and to impede the transaction. The prospect of a long contest, as you have already heard, could put intolerable burdens on the takeover attempt.

I am not—I repeat, I am not—here to try to assist Mr. Turner in his takeover attempt. It seems to me extremely unlikely that he will succeed in any event, which is one of the great mysteries, why everybody is flapping around so actively about something that seems to be facing incredible odds anyway.

Let me just say, Mr. Chairman, that I think this bill does not empower the FCC to ascertain the public interest. It simply arms networks, and CBS in particular, with more ammunition to throw at hostile takeovers. In my view, the bill represents a misguided effort.

[The statement follows:]

### STATEMENT OF GLEN O. ROBINSON

I am pleased to accept the Committee's invitation to comment on S. 1312, the Federal Communications Commission Network Acquisition Approval Act of 1985.

The recent mania of corporate takeover attempts is reminiscent of the California gold rush; the modern takeover "shark" may not resemble the 19th century panhandler in technique, but the quest for corporate gold has stirred excitement and turmoil quite similar to that generated by his forebears at Sutter Fort. The modern gold rush will probably die out in due course, even if no new legal impediments are thrown in its path. However, that probability has not comforted some anxious observers—in and out of Congress—who fear that the economic costs incurred in seeking and resisting corporate takeovers will have long term adverse effects on the corporate economy.

I think the jury is still out on whether the long term effects of the present takeover episode are favorable or adverse. There is quite strong evidence from several recent economic studies that takeovers have substantially increased the share values of acquired corporations relative to the corporations where the takeover attempt was defeated. If one gives any credence to the notion of efficient markets, this increase in value implies efficient results from takeovers, the protests of target firm managers notwithstanding. I admit these gains may be offset by the aggregate costs of takeover maneuvers and countermaneuvers. I know of no way of constructing a reliable benefit-cost assessment of the overall effects, but I am inclined to believe on the evidence to date that the gains predominate.

Happily, we can set the general issue to one side here for S. 1312 focuses only on hostile takeovers involving broadcast networks. It does not even extend to all broadcast media takeovers. Thus, the pertinent question before us is whether hostile *network* takeovers are uniquely problematical such that they call for special regulatory attention. More specifically the question is whether the takeover of a broadcast network raises issues of such compelling public importance that it necessarily requires a full evidentiary hearing before the Federal Communications Committee.

Contrary to the premise of S. 1312, I think the answer to that question is no. Of course, insofar as network takeovers involve transfer of control of broadcast licensees owned by the networks, they require FCC scrutiny under section 310(b) of the Communications Act. I am not suggesting that Section 310(b) be repealed or that the FCC has no business examining such transfers whether they occur by involuntary takeovers or otherwise. This concession implies the FCC might be warranted in holding an evidentiary hearing to consider the effects of the transfer of control on the public interest. In my judgement few transfers of corporate control raise important issues of public interest or concern.

The matter stands no differently in this regard when the takeover involves a network than when it involves a single or multiple broadcast station owner. The contrary assumption of S. 1312 presumably is based on the idea that networks are so singularly important to the structure of broadcasting they necessarily implicate public interest issues whenever there is a change in corporate structure. However, even accepting that networks are very important to the present structure of broadcasting, it by no means follows that a change in corporate control or corporate management structure is necessarily a matter of regulatory concern. Indeed, I think quite the opposite assumption would more often be justified. Particularly is this true where the concern is directed at matters of financial terms only.

To put the issue concretely consider the present controversy over the proposed takeover of CBS by Turner Broadcasting System which is obviously the motive force behind the present bill. Of the several arguments that have been raised by CBS in opposition to the Turner takeover the principal argument is directed against the financial terms which Turner has proposed. CBS claims the Turner offer will burden CBS with a load of debt so heavy as to drive it into a "death sprial" of financial decline and ultimate ruin. I am not a financial analyst and I would not presume to offer an opinion on the merits of the financial terms of the Turner offer. However, I will presume to offer an opinion on the question of regulatory jurisdiction.

Insofar as CBS's arguments are directed to the FCC—or to Congress via the present bill—they are misdirected. More properly the arguments should be addressed to CBS shareholders—or perhaps to the Securities Exchange Commission. The FCC has neither expertise nor experience to evaluate the financial viability of the proposal. There is no reason to suppose that the FCC is better able to evaluate the financial terms of the Turner proposal, and its probable effect on the financial future of CBS, then Wall Street. The best test of whether or not the Turner offer is financially acceptable is whether or not it is in fact accepted by the investment bankers, financial advisers and institutional investors who must make a judgement on this takeover. Nothing the FCC can say can add any creditability to their judgement.

No doubt it will be argued that whether or not the FCC has the expertise, it does have a regulatory responsibility which it must exercise based on the best available evidence, and which it cannot allow to be made by the market alone. To begin with this argument is a bit strange in the context of S. 1312 since its application is limited to hostile takeovers—those not approved by the network's board of directors. If the public interest in a network's corporate structure cannot be delegated to the market, it cannot be delegated to the network's board of directors either. If a transfer of control raises issues of public interest that demand an evidentiary hearing, how does one justify distinguishing between friendly and hostile takeovers? The answer must be that we trust the present network management and we distrust any challengers of whom they do not approve. I know of no basis for implicity trusting incumbent managers over challengers. When the current President of CBS was made chief executive in 1980 I do not recall anyone proposing that the FCC should pass on his qualifications to run CBS "in the public interest" even though, at the time, he was a complete stranger to the broadcast industry.

One hears a lot about the need to maintain corporate "stability" which is said to be threatened by hostile takeovers. I do not know what is intended by this term; presumably it cannot mean managerial continuity. Since Frank Stanton's retirement in 1973 the chief executive and top level officers of CBS have been changed three times. Though the abruptness of the changes was noted in the industry, I do not recall it being the subject of regulatory concern. Nor should it have been, there is no indication that these changes in managerial control had important public interest implications. So too changes in share "ownership"; I would not hazard a guess how many times CBS shares have changed hands, but it would not be a matter of surprise or concern to me—or I am sure the FCC—if a majority of shares have changed hands several times since 1973. Of course, the majority of shares are held by institutional investors (e.g., pension funds) in any event, and I am confident the FCC has no idea who votes those shares on behalf of those investors.

I do not quarrel with the idea that the FCC should consider aspects of the public interest to the extent that there is a substantial basis for concern. And there may be in the CBS-Turner situation. One might be concerned—though I am not—about the effect on diversification of ownership as it relates to news distribution for example. I note, however, that the premier concern appears to be the financial impact on CBS's corporate structure. This seems to me not a matter of significant public interest.

The implication of CBS's argument on financial impact is that the public interest might be seriously affected by a significant change in its corporate structure. We are asked to imagine that the network function of CBS, or the performance of the stations owned by CBS, may be adversely affected by a takeover which leaves the corporation financially weak. There is no credible basis for that supposition. Even if we imagine a worst case scenario in which the takeover leads to a breakup of CBS in its present corporate form, what will happen? Will the networking function disappear? Will the stations go dark? Will people suffer inferior broadcasting service or will network distribution suffer? The likelihood of any of the these events is roughly the same as the probability of 98 million households surrendering their television sets for a subscription to the Book-of-the-Month-Club.

Under the worst case scenario imagined by CBS its stations might have to be spun off to obtain necessary funds to discharge excessive debt. So what? We have no reason to suppose that CBS is the only licensee capable of operating these broadcast stations in the interest of profit or in the interest of the public. Conceivably the network operation might be reorganized or sold. CBS's network operation like those of its sister networks, serves a valuable, important function in the structure of broadcasting and it would not be in the public interest for that operation to disappear or diminish in scope. However, there is no danger of that happening. The fact that the network operation is very profitable ensures its survival and success through any foreseeable structural changes in CBS or transfer of ownership and control. In short, even if the most dire predictions of CBS were to come to pass, there is no reason to be distressed about the long term effects on the public interest.

I do not say any of this to disparage CBS's performance as a network or as a licensee of broadcast stations; in fact I have the highest admiration for CBS's record. I simply do not believe that retention of the present corporate ownership and the present identity of corporate managers, is a social or economic imperative.

Much of the concern over the proposed CBS takeover and others in the broadcasting field is based on the comfortable familiarity with the status quo and the equally discomforting anxiety that attends any change, at least change that is driven by laws of the market place as opposed to the laws of a regulatory agency. Even when there is no clearly defined, public-interest reason to resist change, the time-honored response of regulatory aficionados is to call for a full hearing. The appeal of this call is hard to resist; one can always point to uncertainties, the need for more information, and the symbolic satisfaction of having turned over every stone to ensure no dangers lurk in dark places. True, there are administrative costs, both to the public and to the affected parties, but such costs can always be made to appear slight against the often huge stakes—for example the $5.4 billion price tag on Turner's offer for CBS. The modest administrative burdens of conducting a hearing are warranted in order to protect against the risk of adverse consequences, even if that risk is remote—so goes the argument.

The argument is disingenuous. As I said in any given case there may be unknown factors that can be usefully pursued in a hearing. However, in most of these situations—and I think this includes the CBS-Turner case—the knowable facts are known; the purpose of seeking a hearing, more often than not, is to delay the takeover and thereby to impede the transaction. The prospect of a long contest followed by an inevitable court appeal is not a trivial burden on takeover attempts quite apart from monetary cost. Particularly where the delay adds to the uncertainty of corporate share values and possibly other financial terms and conditions, an evidentiary hearing may very well prove to be a decisive obstacle. Because I am not convinced that hostile takeovers, of corporations in general or networks in particular, are necessarily contrary to the public interest, I cannot believe it is in the public interest to enable target firms to impose this burden—on top of an array of other corporate maneuvers and state law burdens (such as the New York requirement for two-thirds majority approval for hostile takeovers).

I believe the effect of S. 1312 is not to empower the FCC to ascertain the public interest so much as it is to give networks another weapon to be used against hostile takeovers. The fact that it is aimed only at hostile takeovers not friendly acquisitions reinforces this view. In sum the bill represents a misguided concern for an imaginary public concern. It has not credible justification.

The CHAIRMAN. You are against the bill, I take it?

Mr. ROBINSON. I am against the bill.

The CHAIRMAN. Let me ask you, are there any circumstances in which you think the FCC should prevent the takeover of a network?

Mr. ROBINSON. Yes; I can imagine some. Mention has been made of the possible dangers of concentration of control with respect to news distribution. It seems to me it is a legitimate concern of the FCC if the combination of CBS News and CNN were to have a dangerously concentrating effect. I am not totally satisfied with Mr. Turner's response to that, quite frankly. It seems to me that is a legitimate matter for the FCC to look into. In the context, Mr. Chairman, I am not sure I would be too terribly bothered by the combination. I do not think it is a decisive objection to the takeover in this case, but certainly a legitimate concern.

The CHAIRMAN. Mr. Geller, I take it you feel that there should be a review, not only in case of takeovers but generally?

Mr. GELLER. Yes; I believe there should be a hard look. But I am not disagreeing, however, with what Mr. Robinson said to you, that you should not automatically have an evidentiary hearing. On your question, I agree that diversification of information is one of the largest issues.

And I should say to you that I have already filed in the CBS matter. I believe very strongly that CBS should not be able to acquire TBS and CNN, and vice versa, that the merger is much against the public interest. The whole idea is to diversify the sources of information coming to the American people. Those two networks should be in different hands so that when a person clicks on the TV set it is coming to him from different sources. And I see no reason at all to allow that merger.

The CHAIRMAN. Senator Ford.

Senator FORD. Professor Robinson, you said that we should not get involved with who the management might be of the network, whether the president is Wyman or Turner, that the qualifications there should not be involved. We were not disturbed by the, what was it, 1979 change in leadership in CBS and so forth.

There is an underlying reason here for this. We just had the TWA takeover and that was unfriendly, and so they moved to find somebody else and that proved to be more distasteful to the employees than the original one. So, we are getting caught back and forth.

Then we find, another point that you made earlier is that the Turner Broadcasting will be using the liabilities of CBS to make its paper good. Am I correct in your statement?

Mr. ROBINSON. The liabilities? Do you mean the assets?

Senator FORD. The assets, yes. Well, to make the paper good, the assets of CBS will be used after it is acquired.

Mr. ROBINSON. Yes, I assume that is correct.

Senator FORD. So, we find most unfriendly takeovers are those that have very little cash. They come in and use the assets of who they want to take over under a procedure, and then you find the flight of that particular object or institution or corporation, moving to try to find somebody that will be reasonably friendly and they would not fire everybody and become a wholly owned subsidiary.

We have a rash of corporate takeovers today. Maybe it is good and maybe it is bad. I am not sure. But yet, there is a lot of uneasiness among the troops, and the troops are stockholders. They are not the giant individuals that are heading the corporations and in the court battles and pulling the strings and hiring people to take over. It is those who have made a judgment and bought the stock. I guess they have taken a chance for it to be good or bad and to make some money.

That is the underlying problem here. It is not Turner, maybe, versus Wyman or whatever. It is those stockholders. They get thrown in a basket and, as Mr. Geller said a few moments ago, once they are in that basket they are in trouble. If it does not work, then how do they get out of that basket?

Somewhere along the way we have even gotten to the point now where we have to protect employees'' pension plans. You know, takeovers, bankruptcies, all those sort of things; we are trying to protect our constituency.

Are we being so bad, is Congress way out of step, to try to look at the total picture? This happens to be one that we are looking at.

Mr. ROBINSON. Well, Senator, you raise a lot of large problems. Let me address the more general point of your question.

Senator FORD. But we have to answer all of those, basically.

Mr. ROBINSON. This particular bill really does not address the general phenomenon of hostile takeovers. But insofar as that is relevant to your question, let me simply point out that recent economic studies—more than three or four that I am aware of—have shown rather persuasively that the shareholders do better after successful takeovers than they do when those takeovers are defeated.

This is consistent with the testimony you heard earlier about the Council of Economic Advisors report which indicates that the overall effect of corporate takeovers has been benign, indeed it has been positively beneficial to the corporate economy.

I would not for a moment pretend that there are no costs incurred in this whole merger mania, and I am not prepared to say where it all settles out, as to whether the benefits necessarily exceed the costs. But this particular bill does nothing to address that question. It, basically, attacks one type of merger on the ground that networks are special, different—an especially imperiled species, I guess. I just find no basis for singling them out.

Senator FORD. Well, if there is one thing about the bill, we can even change everything, including the title, when we start marking it up. And we could take your advice and move into other areas.

Are you saying that when they go ahead and have a takeover that the companies have been basically better operated and more efficient than those who have successfully defended themselves from a takeover? Did I understand you to say that?

Mr. ROBINSON. Yes, sir; The studies indicate that the share values increase relative to what they were, and that increase reflects, presumably, a more efficient allocation of corporate assets and a more efficient corporate management. That is to say, the market is signaling that it believes the effects were beneficial.

Senator FORD. Well, two come to mind. Phillips 66, they fought their merger and spent billions of dollars or $1 billion or something like that to prevent it, and so they prevented it and so they had to sell off and begin to do things that if they just rolled over and played dead that their company probably would not have had to spend that kind of money and that asset would still be there and these other little entities that they operate would have still been on board, and that would have made a stronger structure.

But they decided to fight, and in fighting they had to spend some money and that was costly.

Now, we find CBS saying, no, we are not going to be taken over, we are going to fight. So they have offered X amount of cash, as I understand it, for 21 percent of their stock. Now, the assets of CBS are being, I guess, diluted by buying the stock. And so by virtue of the attempted merger, which is unfriendly, it is diluting the value of CBS somewhat by using their assets to go out and buy 21 percent of the stock or whatever it is.

Now, when you get the fur up on the back of your neck and you decide to fight, that is a corporate decision, is it not? But they are forced into that by something that they did not ask for.

Mr. ROBINSON. Well, it is not clear it is a legitimate corporate decision. The jury is still out on that. There are a number of lawsuits pending around the country.

Senator FORD. Now, when does the jury ever come in? According to your statement, at the very first page you said the jury was out. Well, the jury is out on everything.

Mr. ROBINSON. Yes, but the point I was just now getting at is there are a number of suits pending to test these poison pills precisely of the kind that CBS has just proposed.

Senator FORD. Is that a poison pill when you talk about using assets like that?

Mr. ROBINSON. It certainly is a poison pill.

Senator FORD. We hear junk bonds referred to a lot, too, and I did not know what a poison pill was.

Mr. ROBINSON. CBS is not engaged in issuing junk bonds. CBS is basically trying to make it more difficult to be taken over. One thing it has done is to increase its debt nearly up to, in fact it may be right up to, the restriction which its corporate bylaws permit, thereby—unless those corporate bylaws are struck down—making it virtually impossible to take over with Turner's bonds.

I might note parenthetically that if we are so concerned about the corporate structure of the networks, maybe we ought to hold a hearing on the effects of CBS's recent proposal, which more than doubles the total debt on the books. If we are concerned about the debt structure, maybe we ought to be concerned about the existing debt structure.

Senator FORD. Well, I understand where you are coming from. I hope you understand where we are coming from.

Mr. ROBINSON. Yes, sir, I do.

Senator FORD. Both of you, I think the Chairman has said, think it would not be good for CNN to acquire CBS or for CBS to acquire CNN.

Mr. GELLER. I believe that very strongly. I would emphasize one thing very strongly to you. The broadcast industry is different. It is a public trust, a public fiduciary. Therefore, you the Congress, have stressed, that you want notice and you want the right of the public to participate, and you want that done every time before there is a resolution of the public interest issues, before there is a transfer of control unless it is a very insignificant case.

I stress to you that this is a very salutary provision and it is being subverted today by the FCC again and again. All the FCC thinks about is, "Let us rely upon the marketplace and to hell with hearing from the public, that is a nuisance. We may have to hold a hearing and that would delay the challenger."

I am all for corporate democracy, but it can be worked out consistent with what you have said you wanted in the 1960 amendments, and this Commission is not doing that. And this area is not concerned with electric toasters. The Chairman once referred to the fact that these entites are no different from companies making electric toasters. He is wrong. These are public trusts, public fiduciaries. You said so and you prescribed a procedure, and he is subverting it.

Senator FORD. Well, also we assign the channels and that sort of thing. We find now, you know, where we have awarded a channel, I think that we had the hearings on it—I do not know whether you were here or not, Mr. Chairman—where they have a VHF station and they are getting ready to transfer that for a UHF station and pick up a couple of hundred million bucks for it. And we awarded that for a public broadcasting station.

We find all kinds of little things going on out there. You know, I heard one time that Barnum said a sucker was born every day, but what he forgot to tell us was there are two people looking for him.

So what we find is that people are working and thinking all the time on how they might make some kind of arrangement and get around the law. I think we have to be very, very careful because this is a public trust assigned to the Congress as it relates to the airwaves, and that is the people's right to know, also.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Let me say that I have read both of your statements and I think your contributions are very great. In fact, I think you are the two best witnesses of the day, even though you do not support my legislation. But you would support forms of it, and I would welcome amendments.

Let me just pursue this thing that I was trying to pursue with Ted Turner for a minute. Of course, everybody is against Government control, but ultimately if we talk about public interest somebody has to determine that public interest. Or if there is not an evidentiary hearing, let us just say we let any company buy any broadcaster or any communications company and they are using the public airwaves, and we are obligated to try to find out if the public interest is being served, which means different things for different people.

If not the designated people, designated by elections or by appointment, who else will determine the public interest?

Mr. GELLER. You have delegated that to the FCC under the Communications Act of 1934. You have said that they are public fiduciaries, that they must establish that they will serve the public interest, and at renewal they must show they have done so.

The elements of the public interest are that it is a system of responsible broadcasters. Therefore, they have to have requisite character, they have to have the proper financial support.

They have to propose and deliver same bad rock programming. In that sense the requisite programming does not concern entertainment. The Commission does not go to entertainment programming, but it should require a reasonable amount of information programming, including directed to children, because they listen so much. And all these things make up the complex of the public interest that the Commission is supposed to look at.

Mr. ROBINSON. Well, I would not disagree with that assessment. I must say, Senator Pressler, that I was rather troubled by Ted Turner's response to your question earlier, because I thought I heard him say that he would welcome the FCC not only evaluating the public interest question——

Senator PRESSLER. Would you pull the microphone a little closer? I cannot quite hear you.

Mr. ROBINSON [continuing]. But getting into programming decisions, something which I find rather dismaying given the fact that we still have a first amendment, which comes even before the Communications Act.

I do not think it is a question of *who* decides the public interest so much as it is a question of *what* particular elements do they get to decide when they decide it. Do they get to sit in judgment on the programming content? Do they get to sit in judgment on questions of fairness, equality, things like that?

I do not think you would get anybody to quarrel with you that the FCC has a general responsibility under the statute. The question is, what does that entail?

Mr. GELLER. I would add one other thing, and that is what Mr. Robinson and I have already stressed diversification of control of these mass media communications. Where you are giving out scarce governmental privileges, it serves the public interest to diversify the sources of information coming to the American people.

That is why there is a ban on TV-newspaper local cross-ownership, why you do not have two networks services in the same town. There is no Red and Blue network any more. You can only offer one network service in a particular city. Diversification of that nature is truly very important.

Senator PRESSLER. What does "substantial or material question of fact" mean under the current Communications Act? I ask this because it appears the FCC does not see any "substantial or material question of fact" in the current hostile network takeover attempt.

Mr. GELLER. I think, Senator, you cannot define it, though. It depends upon the particular issues in each case. In the CBS one, for example, I have said that the merger of CBS and CNN-TBS raises a substantial public interest issue on diversification; that I would not want CBS to take over TBS, nor would I want them to be under common ownership, and that that is a substantial public interest issue.

The facts may not require a hearing. They may be all laid out and all it requires is a decision. I believe, for example, that what the Commission should do, looking at the record, is to hold that they do not need to hold a hearing on diversification. It can simply say, "We will not grant this unless you divest yourself of CNN and TBS."

Mr. ROBINSON. One of the things that has to be kept in mind, Senator, is, although there may be facts in dispute, there may not be any way of resolving them in any kind of forum. They may simply be unknowable. We cannot know, even after an evidentiary hearing, exactly what would happen to CBS if Turner Broadcasting took it over. There is no point in spinning our wheels trying to pursue those uncertainties which are just inherently unknowable. We cannot really know, in spite of what Mr. Turner says, what he would do with the network, that is, in the way of programming. We could hear him testify, et cetera. We could have him take an oath. But I doubt very much that we would learn anything we did not know before.

The reality is that in most of these kinds of hearings, after all is said and done, you know about what you did before. There are very few questions, I think, that can be decisively answered by simply having an evidentiary hearing.

Senator **Pressler**. Thank you very much, Mr. Chairman. And may I thank you on a personal basis for holding this hearing.

The **Chairman**. Gentlemen, thank you both for attending.

That concludes the hearing.

[Whereupon, at 5:40 p.m., the committee was adjourned.]

# ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

## STATEMENT OF HON THOMAS F. EAGLETON, U.S. SENATOR FROM MISSOURI

Mr. Chairman, I am pleased to add my support for S. 1312. The committee's quick action in holding hearings on this legislation is most appropriate because, to be candid, time is of the essence in this matter. The communications industry is experiencing unprecedented upheavals, but its regulatory agency, the FCC, seems to think it's all "business as usual down at the shop." This dangerous misapprehension must be corrected before events give us cause to regret their laxity.

S. 1312 is simple: It requires the Federal Communications Commission to hold evidentiary hearings on any hostile takeover attempt of a broadcast network. The FCC has let slip, both in testimony before the Congress and in its own meetings, that it currently has no set policy on applications for license transfers. Such a haphazard attitude toward the broadcasting industry is dangerous, particularly in today's ever-changing business environment where corporate raiders flourish. Without a set policy, the FCC cannot effectively serve, or even determine, the public's interest in these matters. Further, because there is no reason to believe that the current flurry of activity in the communications industry marks the end of this mania, the situation can only worsen in the future. S. 1312 will correct this gap in our government's protection of the public by establishing a policy that has set procedures and criteria to apply to network takeover attempts.

Establishing required evidentiary hearings has ample precedent. For example, in each of the last three acquisition attempts, ABC/Paramount Theaters Case (1951), ABC/ITT (1966), and ABC/Hughes Tool Company (1968), the FCC held evidentiary hearings. It did so because it recognized that transferring control of a national network presents "issues of a character and level of importance far greater than those presented in routine station transfer cases." Just as today, however, the FCC was sometimes slow to recognize its obligations to the public. In the ABC/ITT takeover, for example, the FCC initially went ahead with approval of the acquisition without conducting evidentiary hearings. The decision caused a widespread outpouring of criticism. To quote an article, "ABC & ITT: Marriage in Haste," from the March 20, 1967 issue of The Nation:

"There have been so many lapses and omissions, so much secrecy and haste, in the handling of this immensely important transaction that the Federal Communications Commission deserves U.S. Senator Gaylord Nelson's recent description, "Just another regulatory agency that has become a willing tool of the industry it is suppose to regulate."

The Justice Department asked that the ABC/ITT case be reopened and reconsidered for its antitrust and profiteering aspects. At that point the FCC reversed itself and convened evidentiary hearings, having learned the folly of making its judgements on the basis of appearance alone.

To quote further from The Nation:

"There may be some good reasons for permitting the merger, but the FCC majority . . . has not made the slightest effort to find out what they are. As soon as ITT and ABC said they were engaged, these four commissioners said go ahead. Never mind hearings or evidence of public need, marry away!"

Eighteen years have passed since those words were written, but they could easily apply to the current FCC. In light of its handling of past network acquisition attempts, it is obvious that the FCC is ignoring its own precedents and procedures.

The Commission's inactivity, and the attitude it reflects, is an outrageous neglect of the Commission's duty to protect the public interest. Transfers of control must be in the best interests of the public and broadcasting, and not merely for those corporate interests wanting to diversify their holdings.

S. 1312 is in no sense a re-regulation of the broadcast industry. It simply codifies the precedents established by the Commission, and makes law a policy to protect the American people and their right to know who is operating the nation's airwaves, how their interests are served, and what the future holds. Based on the Commission's apparent inability to recall the lessons of the past, it also saves the Commission from the agony of having to "re-invent the wheel" each time one of these transfer requests comes before it.

It has been said that S. 1312 is dilatory and pro-management in orientation. To that, I reply that evidentiary hearings are dilatory only if the Commission allows them to be. The duration of such hearings should be governed only by the amount of time needed to fully and coherently explore and examine the dimensions of a network acquisition. This is the Commission's duty as the representative of the public's intrests. After all, the airwaves belong to all of us, or so I was led to believe. Public justice is ill-served by approving the transfer of control of a major network by reading a simplified, abridged form, without benefit of public evidentiary hearings. This legislation will ensure that such shabby treatment of the public's interest does not occur.

As to being pro-managment, let me stress that the findings of an evidentiary hearing process are not the salient issue here. If such a process were to determine that the public would be better served by a change in managment and ownership, so be it. The reverse is true as well: if it is in the public's interest that current management of a network remain in place, that is fine as well. The important thing is that the hearing process take place, and that is the intent of S. 1312.

Thank you.

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U.S. SENATE,
*Washington, DC, July 25, 1985.*

MR. MARK FOWLER,
*Chairman, Federal Communications Commission,*
*Washington, DC.*

DEAR CHAIRMAN FOWLER: CBS has forwarded to Chairman Danforth and me copies of the articles which served as the basis for allegations that FCC officials have made public statements reflecting some degree of prejudgment regarding Turner Broadcasting's proposal to take over CBS.

As you will recall, these allegations served as the basis for my questions to you at the Senate Commerce Committee's hearing on S. 1312. At that time you responded in great detail, asserting that the claims were "factually wrong" and that the published statements were largely unattributed.

I have reviewed CBS' documentation and found it to be generally supportive of their factual claims. Therefore, I request that you personally review the enclosed materials and provide me with a detailed explanation of the discrepancies which exist, or apparently exist, between your testimony and this material.

For example, in response to allegations that FCC officials were quoted as laying out strategies and "roadmaps", and that the proposed takeover was "do-able and wouldn't encounter any FCC problems", you responded that you thought the article dealt with an "unnamed source" and therefore had "no way of knowing." The articles attribute these comments to Mr. Roy Stewart, chief of FCC's video services division, and Mr. James McKinney, chief of FCC's mass media bureau. Both of these individuals were with you at the Commerce Committee hearing and presumably available to assist in clarifying and addressing the matter. I am most curious to learn why you responded as you did.

Please understand that this communication is not intended in any way to influence the Commission's processes or determinations with regard to the Turner takeover proposal. My only intention is to obtain a canded explanation of this matter.

In order to ensure that the Commerce Committee's record is also as complete as possible, I have requested that this letter, the documentation forwarded by CBS, and your response be included in the formal record of the July 18, 1985 hearing. Your prompt attention to the matter would be most appreciated.

Sincerely,

DANIEL K. INOUYE,
*U.S. Senator.*

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FEDERAL COMMUNICATIONS COMMISSION,
*Washington, DC, August 7, 1985.*

Hon. DANIEL INOUYE,
*U.S. Senate, Washington, DC.*

DEAR SENATOR INOUYE: I would like to thank you for this opportunity to clarify for the record my testimony before the Senate Committee on Commerce, Science and Transportation on July 18, 1985. Hopefully, this letter will answer some questions that you properly raise as to my responses to questions that you posed during the testimony.

While I was fully briefed for my response to questions concerning Mr. Vradenburg's letter of July 15, 1985, I only had an opportunity to partially skim Mr. Wyman's testimony literally minutes before I testified. I believe that this contributed to some confusion on my part as I was mistaken as to the portion of Mr. Wyman's testimony that was under discussion.

During my brief review of Mr. Wyman's testimony I saw one excerpt from the July 13, 1985, Washington Post which I knew was not attributed to any source. I did not have a chance to read that portion of Mr. Wyman's testimony which contained the attributed stories. The quote to which you were referring was quite properly attributed to Mr. James McKinney, Chief of our Mass Media Bureau. I misunderstood the question as referring to the nonattributed story which I had previously read.

After speaking with both Mr. McKinney and Mr. Roy Stewart, I understand that neither of them recognized the attributed statements as their own. Neither of them had the opportunity to have their memories refreshed by seeing the statements at that time. Their failure to clarify my statement was inadvertent and, I believe, understandable under the situation.

Senator, I want to assure you that any confusion arising out of my response to your inquiry was not deliberate. I believe that my response with regard to Mr. Vradenburg's letter was accurate, but I misunderstood which section of Mr. Wyman's testimony was under discussion.

I would like to reiterate that I do not believe that the Commission prejudged the merits of this proceeding and I do not believe that the Honorable Daniel Inouye attributed statements, taken in context, evidence prejudgement. I am committed to giving all parties before this Commission an impartial and fair consideration of the merits of their position.

Sincerely,

**Mark S. Fowler**, *Chairman*.

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CBS, Inc.,
*Washington, DC, July 19, 1985.*

Hon. John C. Danforth,
*Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Senate Russell Office Building, Washington, DC.*

Dear Mr. Chairman: During yesterday's hearing on S. 1312, in response to a direct question from Senator Daniel Inouye, FCC Chairman Mark S. Fowler took issue with certain statements made in the prepared statement of CBS Chairman Tom Wyman (and with similar statements made by me in a letter to Chairman Fowler dated July 15, 1985). Specifically, the CBS statements catalogued a series of press reports which indicated that FCC officials had repeatedly made comments to reporters concerning the merits of adjudicatory matters. Quite properly, Mr. Fowler has indicated his strong support for the principle that such comments to the press are improper; indeed, in a letter to me dated July 18, 1985, he said that "due process" requires the avoidance of such communications,"on or off the record."

However, Mr. Fowler told the Committee yesterday that the factual assertions contained in Mr. Wyman's testimony and my letter are incorrect. Indeed, with particular reference to my letter, Chairman Fowler stated that "I find that in every case it is factually wrong." (Transcript at p. 45). In the case of a few of the press reports, Mr. Fowler argued that his senior officials may have been "misquoted." Primarily, however, he asserted his belief that the reported statements were attributed only to "sources" not to "FCC officials." In fact, as you can readily see from the attached memorandum, most of the press stories in question directly and explicitly attribute their reports to FCC officials—often identifying senior agency officials by name. In the very few instances where this identification is less than explicit, the context of the report makes it unmistakable that FCC insiders were the original source of the material in question.

In his letter of July 18, Chairman Fowler stressed the importance of being "very precise" in discussing sensitive matters such as inappropriate press statements by public officials. We are in full agreement on this point and have attached[1] for the Committee's consideration a detailed memorandum which identifies each of the press reports relied upon by Mr. Wyman or myself and which includes complete copies of those reports.

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[1] The attachment was not reproducible and is in the committee files.

Respectfully submitted,

GEORGE VRADENBURG III,
*Vice President and General Counsel.*

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
*Washington, DC, July 29, 1985.*

Hon. JOHN C. DANFORTH,
*Chairman, Committee on Commerce, Science, and Transportation,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In connection with the hearing of the Subcommittee on Communications on July 19, the UAW would appreciate the inclusion of the enclosed communication from President Owen Bieber to the FCC relating to the subject matter of your hearing. You will note that Mr. Bieber's letter supports the Petition to Deny the Transfer of Broadcast License from CBS to the Turner Broadcasting System.

Thank you for your attention in this matter.

Sincerely,

DICK WARDEN, *Legislative Director.*

Enclosure.

SOLIDARITY HOUSE,
*Detroit, MI, June 6, 1985.*

Mr. WILLIAM J. TRICARICO,
*Secretary, Federal Communications Commission, Washington, DC.*

DEAR MR. TRICARICO: This letter is in support of the Petition to Deny the Transfer of Broadcast Licenses from CBS, Inc. to the Turner Broadcasting System (TBS), which the International Brotherhood of Electrical Workers has filed with the FCC. The UAW supports the position of the IBEW as outlined in its Petition.

For the reasons stated in the IBEW's Petition and the AFL-CIO Executive Council's statement entitled "The Corporate Takeover Epidemic," we believe that it would not be in the public interest to sanction the kind of hostile takeover of an established broadcaster that TBS is proposing. A copy of the Executive Council statement is enclosed.

As is typical in hostile takeovers involving novel financing schemes, and as TBS's own pronouncements have made clear, the enterprise created by this proposed buyout and merger will be a debt-ridden one. The result would likely be a loss of employment for many CBS employees, a concentration of media control and, because of the substantial debt, an inability to develop and produce the kind of quality programming the public deserves.

We urge the Commission to consider seriously the potential impact of TBS's proposed acquisition on the diversity and quality of programming which will be available to the public, and to deny TBS's application.

Sincerely,

OWEN BIEBER, *President.*

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AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
*Washington, DC, July 26, 1985.*

Hon. JOHN C. DANFORTH,
*Chairman, Committee on Commerce, Science, and Transportation,*
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN DANFORTH: The AFL-CIO would be most appreciative if the hearing by the Senate Commerce Committee, on July 18, 1985 concerning the proposed acquisition of CBS, could include our views on this important subject. We would appreciate it if you would include this letter in the hearing record, along with our June 27, 1985 letter to the Federal Communications Commission (FCC), our June 12, 1985 testimony [1] before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, and the

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[1] See hearing held before the Committee on Energy and Commerce, U.S. House of Representatives.

AFL-CIO's May 8, 1985 Executive Council Statement entitled "The Corporate Takeover Epidemic".

As indicated by the attached June 27, 1985, letter to the FCC, the AFL-CIO maintains that the issues presented by the Turner Broadcasting System (TBS) application for transfer of the broadcasting licenses currently held by CBS, Inc. warrant a full evidentiary hearing. In this regard, the AFL-CIO urges your support for S. 1312, the "Network Acquisition Approval Act of 1985," which would require the FCC to hold evidentiary hearings in hostile network takeover cases. The legislation is designed to protect the public interest without favoring either incumbent network management or potential raiders.

The AFL-CIO urges the Committee to give prompt and favorable consideration to S. 1312.

Sincerely,

Ray Denison,
*Director, Department of Legislation.*

Enclosures.

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American Federation of Labor and
Congress of Industrial Organizations,
*Washington, DC, January 27, 1985.*

Mr. William J. Tricarico,
*Secretary, Federal Communications Commission, Washington, DC.*

Dear Mr. Tricarico: On behalf of our 96 affiliated labor organizations, their 13.8 million members and their families, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) strongly opposes the application for transfer of the broadcasting licenses currently held by CBS, Inc., filed by the Turner Broadcasting System (TBS). For reasons stated by the International Brotherhood of Electrical Workers, AFL-CIO (IBEW), in its Peitition to Deny Transfer of Licenses filed with the Commission on June 3, 1985, the AFL-CIO respectfully submits that the FCC should deny the TBS application because of its plans to acquire and restructure CBS, Inc. would be contrary to the public interest.

The AFL-CIO has had a long-standing concern that corporate takeovers by raiding and leverage buyouts have detrimental effects upon this country's economic health. Reflecting that concern, the AFL-CIO's Executive Council issued a policy statement on May 8, 1985 entitled "The Corporate Takeover Epidemic", a copy of which is enclosed. That statement expresses the AFL-CIO's view that corporate takeovers achieved through "leverage buyouts" and other new financing schemes, such as junk bond financing, produce neither new assets nor additional jobs. In June 12, 1985 testimony before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, a copy of which is also enclosed, the AFL-CIO specifically noted that the Turner proposal is illustrative of many recent corporate takeover attempts in which the financial underpining is "junk bond financing". These are bonds with little tangible security when issued, posing a high risk for purchasers and bearing high interest rates. As publicly announced, the Turner proposal seeks to acquire CBS with the bond proceeds and pay off the bonds by selling some of the CBS assets.

Viewed in this context, it is evident that the TBS proposal would likely result in a single, debt-ridden corporation, with attendant loss of employment for many current CBS employees and an unheathy concentration of control in the media in a single, new organization. This is especially disturbing to the members and families of the IBEW, an AFL-CIO affiliate, which represents over 2,000 employees working at CBS, Inc.

Workers and their families are seldom considered in the proceedings which surround corporate merger and takeover proceedings. However, the employees have a particularly vital stake in the ongoing stability and economic viability of CBS, Inc., both from the standpoint of their own job security and their concern that the TBS acquisition would have a detrimental impact on the diversity of programming that would be available to the public.

For these reasons, the AFL-CIO respectfully urges favorable consideration of the "Petition to Deny Transfer of Licenses" filed by the IBEW and requests a full evidentiary hearing on the issues presented by the TBS application.

Sincerely,

Ray Denison,
*Director, Department of Legislation.*

Enclosure.

## STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON THE CORPORATE TAKEOVER EPIDEMIC

The economic health of the United States is threatened by an epidemic of corporate takeovers by raiding and leveraged buyouts. Barely a day goes by without news that another raid has been launched or that another company has swallowed a "poison pill" or has adopted a "scorched-earth" policy to defend against potential raiders.

The number of successful tender offers has risen from an average of two per year in the late 1950s to 70 per year in the late 1970s. Today's headlines are filled with nonproductive attacks against major, profitable companies such as CBS, Crown Zellerbach and Unocal. Next month's list is likely to be even longer.

The billions of dollars used to finance, as well as to fend off, takeovers is money that is not available for strengthening the national economy. The time, effort and imagination that corporate managers are devoting to waging and combating takeover battles is time, effort and imagination that is being siphoned off from the task of building better products and providing better services at a better price. When the takeover succeeds, corporate concentration is increased; in the media the results threaten freedom of the press and in the oil industry reduced competition has left consumers at the mercy of a few conglomerates.

America can ill afford this waste of scarce resources; and the losses being suffered now are only the beginning. A company that desires to avoid a takeover must maximize short-term profits at the expense of capital investment, research and development. In the long run, this way of doing business is the certain prescription for economic ruin.

No matter which side wins control in a takeover battle, workers, customers, and the community in which the company is located are the likely ultimate losers. The company normally winds up saddled with added debt or otherwise weakened. Workers too often finance the costs of the raid by job losses or pay cuts. And consumers end up paying higher prices for the company's products. If the costs cannot be passed off to others, productive assets are liquidated—again to the detriment of workers and their communities. Indeed such "bust-up" financing is common in hostile takeovers.

The AFL–CIO favors a broad array of government actions to limit corporate power, to direct credit to productive uses and to protect workers and consumers. Given this Administration's unthinking allegiance to deregulation and its blind faith in "free markets" we recognize that our proposals in this regard are unlikely to be enacted into law quickly enough to meet the current threat. But this much is clear: there is no reason for federal law to encourage the dangerous speculative excesses that feed the takeover epidemic. The AFL–CIO therefore calls for the following immediate actions:

The tax laws should be changed to prevent the encouragement of takeovers through manipulation of various provisions that result in subsidizing corporate mergers and takeovers. These provisions include capital gains, depreciation, loss carryovers, and interest deductions.

The practice of "greenmail"—which is nothing more than extortion by raiders—should be proscribed.

The securities laws should be strengthened in two respects. First, stockholders' rights should be enhanced. Stockholders of would-be corporate raiders should have the right to decide whether to divert their company's assets to finance a raid. Stockholders of a target company, in turn, should have the right to decide whether to expend their company's assets on defensive measures against a raid. Most important, when a raid is launched, stockholders of the target company should also have the right to decide democratically, free of pressures of two-tiered tender offers and the like, whether to accept or reject the tender offer. Second, the threshold at which a person must report beneficial ownership in a public company should be reduced in order to promote full disclosure of takeover efforts.

Finally, the laws regulating banks, trustees and other fiduciaries should prohibit investment in the unsound, speculative instruments of the corporate raider.

Mechanisms need to be developed which protect the interests of workers and communities in mergers and takeovers.

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